115-25

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 269.

JAMES E. S. HADDEN, HAROLD F. HADDEN AND FRANCIS POTT, SURVIVING PARTNERS, PLAINTIFFS IN ERROR,

vs.

EDWIN A. MERRITT, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 19, 1882.

difference between it and the case of McAllister, consists in the fact that the petition for removal is sworn to, and the further fact that the action was originally instituted against the Southern Pacific Railway Co., a Texas corporation.

The suit was brought in the District Court for Harrison County, Texas, to recover damages, for a personal injury suffered by plaintiff through the negligence of the defendant Company, while he was a passenger on its road.

The defense, was want of negligence. A removal was applied for by the Company and refused.

There were two trials. The second trial resulted in a verdict and judgment in favor of plaintiff for $9,000.

On appeal this judgment was affirmed by the Supreme Court of Texas. They held that the Court below rightly refused to remove the cause and they refer to their opinion in the McAllister case.

We submit that the judgments should be affirmed.

W. HALLETT PHILLIPS,
A. H. GARLAND,
For Defendants in Error.

WASHINGTON, Nov. 1, 1884.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, between James E. S. Hadden, Harold F. Hadden, and Francis Pott, surviving partners, plaintiffs, and Edwin A. Merritt, defendant, a manifest error hath happened, to the great damage of the said James E. S. Hadden, Harrold F. Hadden, and Francis Pott, surviving partners, as by their complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the plaintiffs aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have
2 the same at Washington on the 2d Monday of October, 1882, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 24th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] J. M. DEUEL, *Clerk.*

The foregoing writ is hereby allowed.

ADDISON BROWN.

3 UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 9 to 65, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of James E. S. Hadden *et al.*, plaintiffs in error, against Edwin A. Merritt, coll'r, &c., defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of York, in the second circuit, this thirteenth day of September, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh

[SEAL.] J. M. DEUEL, *Clerk.*

4 [Endorsed:] U. S. Supreme Court. 5936. James E. S. Hadden, Harrold F. Hadden, and Francis Pott ag'st Edwin
1—269

A. Merritt. Writ of error. Due and sufficient service of a copy of the within writ of error is hereby admitted. Dated N. Y., June 26, 1882. S. L. Woodford, U. S. attorney, att'y for def't. U. S. circuit court. Filed June 26, 1882. Joseph M. Deuel, clerk.

5 UNITED STATES OF AMERICA, *ss*:

[SEAL.] To Edwin A. Merritt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, 1882, pursuant to a writ of error filed in the clerk's office of the *supreme* court of the United States for the southern district of New York, wherein James E. S. Hadden, Harold F. Hadden, and Francis Pott, surviving partners, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiffs in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, this 24th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

ADDISON BROWN.

6 [Endorsed:] U. S. Supreme Court. 5936. James E. S. Hadden, Harrold F. Hadden, and Francis Pott ag'st Edwin A. Merritt. Citation. Due and sufficient service of a copy of the within citation is hereby admitted. Dated New York, June 26, '82. S. L. Woodford, U. S. attorney, att'y for def't. U. S. circuit court. Filed June 26, 1882. Joseph M. Deuel, clerk.

7 U. S. Circuit Court.

W. A. HADDEN, Plaintiff in Error,
vs.
EDWIN A. MERRITT, Defendant in Error. } 5936.

It is hereby consented by the attorney for the defendant in error that the plaintiff in error may deposit with the clerk of this court the sum of forty-eight and $\frac{91}{100}$ ($48.91) dollars in lieu and place of the security required before the issuing of the citation accompanying writ of error in this cause.

Dated New York, June 22d, 1882.

STEWART L. WOODFORD, H. R. W.,
U. S. Att'y, for Def't.
W. B. COUGHTRY, *Att'y for Def'ts.*

8 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the 24th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

Present: The Honorable Addison Brown, circuit judge.

WILLIAM A. HADDEN *et al.*, Plaintiffs in Error,
ag'st
EDWIN A. MERRITT, Collector, Defendant in Error.

On reading and filing the annexed consent of the attorney for the defendant in error herein, and on motion of W. B. Coughtry, Esq., attorney for plaintiff in error—

Ordered, That the plaintiff in error may deposit with the clerk of this court the sum of forty-eight & $\frac{91}{100}$ (848.91) dollars in lieu and place of the security on issuing citation accompanying the writ of error in this cause.

(Signed) ADDISON BROWN.

(Endorsed:) U. S. circuit court, S. D. N. Y. Wm. A.
9 Hadden *et al. vs.* E. A. Merritt. Order depositing money in lieu of bond on appeal. U. S. circuit court. Filed June 24,
1882. Joseph M. Deuel, clerk.

10 *Assignment of Errors.*

Supreme Court of the United States. Of October Term, in the year 1882.

JAMES E. S. HADDEN, HAROLD F. HADDEN, and FRANCIS POTT, Surviving Partners, Plaintiffs in Error,
ag'st
EDWIN A. MERRITT, Defendant in Error.

Afterwards, to wit, on the first day of said term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, came the said James E. S. Hadden, Harold F. Hadden, and Francis Pott, by Tremain & Tyler, attorneys, and say that in the record and proceedings aforesaid there is error in the several rulings of the court to which exception has been taken, and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defendant against the said plaintiff, whereas by law of the land the said judgment ought to have been given for the said plaintiffs in error against
11 the said defendant in error, and the said plaintiffs pray that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, as the same more fully appear therein, may be reversed, annulled, and altogetherheld for nothing, and that they, the plaintiffs, may be restored to those things which they have lost by reason of said errors and judgment.

TREMAIN & TYLER,
Attorneys for Plaintiff in Error.

H. E. TREMAIN,
Of Counsel.

12 *Joinder in Error.*

Supreme Court of the United States. Of October Term, in the year 1882.

JAMES E. S. HADDEN, HAROLD F. HADDEN, and FRANCIS POTT, Surviving Partners, Plaintiffs in Error,

ag'st

EDWIN A. MERRITT, Defendant in Error.

And afterwards, to wit, on the first day of said term, before the justices of the Supreme Court of the United States, the said defendant in error, by Stewart L. Woodford, his attorney, comes herein to court and says: That there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

S. L. WOODFORD,
Attorney for Defendant in Error.

13 [Endorsed:] 5936. U. S. Supreme Court. James E. S. Hadden & *als.*, surviving partners, &c., plaintiffs in error, *versus* Edwin A. Merritt, defendant in error. Joinder in error. Stewart L. Woodford, United States attorney, attorney for defendant in error. Due service of a copy of the within is hereby admitted. New York, September 12th, 1882. Tremain & Tyler, attorneys for plaintiffs in error. To Tremain & Tyler, attorneys for plaintiffs in error.

14 *Summons—With Notice.*

Supreme Court, City and County of New York.

WILLIAM A. HADDEN, FRANCIS POTT, J. E. S. HADDEN, and H. F. H. HADDEN, Plaintiffs,

against

EDWIN A. MERRITT, Collector of the Port of New York, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated August, 1879.

W. B. COUGHTRY,
Plaintiffs' Attorney, No. 111 *Broadway.*

P. O. address: 111 Broadway, New York city.

15 *Notice.*

Take notice that upon your default to appear or answer the above summons judgment will be taken against you for the sum of —— dollars, with interest from ——, and with costs of this action.

———,
Plaintiff-' Attorney.

Endorsed: 5936. To E. A. Merritt, Esq., collector, &c. Rec'd Aug. 4, 1879.

16 [L. S.] The President of the United States of America to the judges of the supreme court of the State of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Edwin A. Merritt, defendant, by Wm. A. Hadden & *al.*, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 9th day of Sept. 1879, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 6th day of Sept., 1879.

JOHN I. DAVENPORT, *Clerk.*

STEWART L. WOODFORD,
Defendant's Attorney.

17 Endorsed: 5936. U. S. circuit court. Wm. A. Hadden & *al. vs.* Edwin A. Merritt. Copy *certiorari.* Stewart L. Woodford, defendant's attorney. Take notice that the within is a copy of a *certiorari* this day issued out of the circuit court of the United States for the southern district of New York. New York, Sept. 6, 1879. Yours, Stewart L. Woodford, defendant's attorney. To ——— ———, plaintiffs' attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, Sept. 6, '79. W. B. Coughtry, plaintiffs' attorney. W. B. C.

18 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Circuit Court of the United States for the Southern District of New York.

WILLIAM A. HADDEN, FRANCIS PRATT, J. E. S. HADDEN, & H. F. H. HADDEN
vs.
EDWIN A. MERRITT, Collector of the Port of New York.
} Suit No. 5936.

The plaintiffs in this action, by W. B. Coughtry, their attorney, complain of said defendant:

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2nd. That plaintiffs were, during said times, partners in trade, under the firm name of Hadden & Company, and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. That defendant, as such collector, exacted from plaintiffs as and for duties upon said goods divers sums in excess of the sums authorized to be assessed and collected by defendant under the
19 laws of the United States, which said several sums said plaintiffs, in order to obtain said goods, were compelled to pay, and did pay, as set forth in the pl'ffs' bill of particulars.

4th. That plaintiffs filed with said defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the ground of objection thereto.

5th. Plaintiffs also made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of the defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals, and more than 90 days has elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars, hereto annexed, states for each importation separately the date of entry, payment of duty in excess, and the other particulars required by law, and is made a part hereof.

7th. That the said sum of two hundred and twenty-nine $\frac{87}{100}$ dollars in United States coin so exacted has never been paid
20 to plaintiffs, and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for two hundred & twenty-nine $\frac{87}{100}$ dollars in United States gold coin, with interest on the several sums named in the bill of particulars from the several dates of payment, as appear thereby.

W. B. COUGHTRY,
Plaintiffs' Attorney, 111 *Broadway, N. Y.*

21 *Pl'ff's Bill of Particulars.*

Imported by Hadden & Co. at the Port of New York.

Description of merchandise: Valuation of the Mexican and trade dollars. Name of vessel: Challenge. Whence imported: China. Date of invoice: Nov. 1, 1878. Date of entry: M'ch 1, 1879. Date of paying duty: M'ch 3, 1879. Amount illegally exacted: 229.87. Date of filing protest: M'ch 25, 1879. Date of appeal: M'ch 25, 1879. Date of Sec'y's decree: May 16, 1879.

22 Endorsed: 5936. U. S. circuit court. W. A. Hadden & *al. vs.* E. A. Merritt. Copy. Complaint & bill of particulars. Sir: Please take notice that within is the plaintiff's complaint & bill of particulars in this action. Sept. 23, 1879. W. B. Coughtry,

pl'ff's' att'y. To S. L. Woodford, Esq., def't's att'y. Received U. S. attorney's office, Sept. 24, 1879.

23 Supreme Court, City and County of New York.

WILLIAM A. HADDEN, FRANCIS POTT, J. E. S. HADDEN, and H. F. H. HADDEN
versus
EDWIN A. MERRITT, Collector of the Port of New York. } Suit No. ——.

Trial to be had in the county of New York.

The plaintiffs in this action, by W. B. Coughtry, their attorney, complain of said defendant—

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2nd. That plaintiffs were, during said times, partners in trade under the firm name of Hadden & Co., and, as such, duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3rd. That defendant, as such collector, exacted from plaintiffs, as and for duties upon said goods, divers sums in excess of the sums authorized to be assessed and collected by defendant under the laws of the United States, which said several sums said plain-
24 tiffs, in order to obtain said goods, were compelled to pay, and did pay, as set forth in the plaintiff's' bill of particulars.

4th. That plaintiffs filed with said defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto.

5th. Plaintiffs also made due and timely appeals in each case to the Secretary of the Treasury, who has neglected to answer said appeals, and more than ninety days have elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars hereto annexed states for each importation, separately, the date of entry, payment of duty in excess, and the other particulars required by law, and is made a part hereof.

7th. That the sum of thirty-three hundred and sixty-six $\frac{37}{100}$ dollars so exacted has never been repaid to plaintiffs and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for thirty-three hundred & sixty-six $\frac{37}{100}$ dollars, with interest on
25 the several sums named in the bill of particulars from the several dates of payment, as appear thereby.

W. B. COUGHTRY,
Plaintiff's Attorney, 111 *Broadway, N. Y.*

26 The particulars of the plaintiffs' claim in this action are as follows upon merchandise imported by Messrs. Hadden & Co. at the port of New York :

Pl'ffs' Bill of Particulars.

Description of merchandise.	Name of vessel.	Country whence imported.	Date of invoice.	Date of entry.	Date of paying duty.	Amount el'm'd to have been illegally exacted.	Date of filing protest.	Date of appeal	Date of Sec'y's dec'n.
Matting and other merchandise invoiced in Mexican dollars.	S. R. Bearce	China	1879. Jan. 3	1879. May 20		30 90	1879. June 10	1879. June 30	
	S. R. Mead	"	1878. Oct. 16	Feb'y 27	Feb. 27	1,589 78	" 21	" "	
	Athene	"	Aug. 23 / Sep. 13	M'ch 22	M'ch 22	614 10	" "	" "	
	Challenge	"	Nov. 1	" 1	" 3	157 24	July 3	July 23	
	Lizzie Perry	"	" 28	Ap'l 15	Ap'l 15	398 52	" "	" "	
	Moneta	"	Dec. 3-18-20	" 24	" 24	225 18	" 8	" "	
	do.	"	" "	" "		350 65	" "	" "	

27 United States Circuit Court, Southern District of New York.

WILLIAM A. HADDEN and *al.*

versus

EDWIN A. MERRITT, Collector, &c.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action:

1st. He admits he was at the time in the said complaint mentioned collector of the port of New Yerk, and in such official capacity received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

2d. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by them to the United States, and not otherwise, and were received by defendant by virtue of his
28 office as said collector, and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter, and before the commencement of this action or the service of any protest, paid into the Treasury of the United States, and that the amount of said moneys so received from plaintiffs were the amounts due from them to the United States according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with duty, and no other sums than duties regularly assessed, and ascertained and liquidated according to law upon the plaintiffs' import entry thereof, were collected or received by defendant from the plaintiffs.

3d. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint, by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state that said merchandise were
29 dutiable, according to the laws of the United States, at the rates at which the same were assessed.

4th. And defendant, further answering, admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether upon the importations in question protests and appeals were made by the plaintiffs conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as they may be advised.

5th. And as to any other allegations in said complaint contained, not hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed, with costs.

STEWART L. WOODFORD,
United States Attorney, for Defendant.

30 SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

Edwin A. Merritt, being duly sworn, says: That he is the defendant above-named; that the foregoing answer is true, to his own knowledge, except as to the matters stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me, this day of ———, 18—.

———— ————,
Notary Public, New York City.

Endorsed: 5936. U. S. circuit court, southern district of New York. William A. Hadden & *al. vs.* Edwin A. Merritt, collector, etc. Answer. Stewart L. Woodford, United States attorney for defendant. Due service of a copy of the within answer is hereby admitted. New York, Oct. 3d, 1879. W. B. Coughtry, plaintiffs' attorney. To W. B. C., plaintiffs' attorney.

31 U. S. Circuit Court, Southern District of New York.

WM. A. HADDEN *et als.*, *vs.* EDWIN A. MERRITT, Coll'r, &c. } 5936.

SAME *vs.* SAME. } 6142.

W. B. Coughtry, plaintiffs' attorney, in the above causes, being duly sworn, says: That each of the above actions is brought to recover an alleged excess of duty charged on an erroneous valuation of the Mexican silver dollar or trade dollar.

W. B. COUGHTRY.

Sworn to before me, the 12th day of March, 1880.
THOMAS GREENWOOD,
Notary Public, N. Y. City.

32 We hereby consent that the above-entitled actions be consolidated and known by the specific number 5936.

Dated N. Y., March 12, 1880.

WM. B. COUGHTRY,
Pl'ffs' Att'y.
STEWART L. WOODFORD,
U. S. Att'y, for Defendant.

Ordered accordingly.

WM. G. CHOOTE.

33 At a stated term of the circuit court of the United States of America for the southern district of New York, in the

second circuit, held at the United States court-rooms, in the city of New York, on Wednesday the 20th day of October, in the year of our Lord one thousand eight hundred and eighty.

Present: The Honorable Nathaniel Shipman, judge.

WILLIAM A. HADDEN, FRANCIS POTT, J. E. S. HADDEN, & H. N. H. HADDEN
vs.
EDWIN A. MERRITT. } 5936.

This case being still on trial, the jurors sworn in it are called and severally answer to their names.

Mr. Tremain moves that the court direct the jury to find a verdict for the plaintiffs, the amount of the verdict to be stated by the court.

34 C. P. S. Butler, ass't U. S attorney, of counsel for the defendant, moves that the court direct the jury to find a verdict for said defendant.

The court denies the motion to direct the jury to find a verdict for the plaintiffs, and Mr. Tremain excepts to the ruling of the court in so doing.

The court grants the motion to direct the jury to find a verdict for the defendant, and directs the jury to find a verdict for the defendant.

The jury say that, by direction of the court, they find a verdict for the defendant, and so say they all.

On motion of W. B. Coughtry, Esq., ordered that plaintiffs have a stay of proceedings for 60 days wherein to propose a bill of exceptions in this cause.

Endorsed: 5936. C. C. of the U. S., S. D. of N. Y. W. A. Hadden *et al. vs.* E. A. Merritt. Transcript from minutes.

35 *Judgment.*

United States Circuit Court, Southern District of New York.

WILLIAM A. HADDEN & *al. vs.* EDWIN A. MERRITT.

The issues in this action having been brought on for trial before Mr. Judge Shipman and a jury, at a circuit court of the October term, 1880, and the issues having been tried, and a verdict for the defendant having been duly rendered on the twentieth day of October, 1880, and his costs having been adjusted at $48.91:

Now, on motion of Stewart L. Woodford, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.91, his taxed costs, and have execution therefor.

Judgment signed this 20th day of May, 1882.

JOHN A. SHIELDS,
Deputy Clerk.

36 Endorsed: 5936. United States circuit court. William A. Hadden & *al. vs.* Edwin A. Merritt. Judgment roll. Stewart L. Woodford, United States attorney, for defendant. U. S. circuit court. Filed May 20, 1882, 2 o'c'k. Joseph M. Deuel, clerk. Costs, $48.91.

37 *Bill of Exceptions.*

United States Circuit Court, Southern District of New York.

WILLIAM A. HADDEN *et al.*
against
EDWIN A. MERRITT, Collector, &c.

The issue joined in this action came on for trial at the October term, 1880, of this court, at a session thereof held at the United States court-rooms, New York, by N. Shipman, district judge, sitting as circuit judge, and a jury, on the 19th and 20th days of October, 1880.

The plaintiff being represented by his counsel, Tremain and Tyler, Esquires, and W. B. Coughtry, Esquire, and the defendant by assistant district attorneys C. P. L. Butler, Esq., and A. B. Herrick, Esq.; and at said trial divers exceptions were taken by plain-
38 tiff to the rulings of said court in the exclusion of testimony and in instructions and refusals to instruct the jury, which appear more fully in the following account of the proceedings of said trial.

Plaintiffs' counsel, after opening the case, adduced evidence showing importations by plaintiffs, who were partners doing business under firm name of Hadden and Company, from China into the port of New York, of several invoices and miscellaneous merchandize, at the times and by the vessels named in the bills of particulars comprehended in this suit (this suit being a consolidation, by order of the court, of two suits).

All of said invoices were made out in the currency of the country whence the goods were exported (China), namely, in Mexican silver dollars, which is said currency.

The invoices of said merchandize presented by the plain-
39 tiffs at the custom-house, together with the entries made by the plaintiffs on each of said invoices, were then read in evidence by the plaintiffs. Their contents sufficiently appear as hereinafter stated, and also as particularly indicated by Schedule "Q," hereinafter incorporated and read in evidence at said time.

The said importations were subject to an *ad valorem* duty.

It was also proved that in converting the value of said invoices, as expressed therein, from Mexican silver dollars into the value by which the actual *ad valorem* duty upon said invoices was to be ascertained; the dutiable value was arrived at in each case by estimating the value of the Mexican dollar in accordance with the value of such coin as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, on the first day of January of the year during which the importations were made, and the value of

said Mexican dollar so ascertained, estimated, and proclaimed
40 was $101\frac{5}{10}$ths *dollars*, and duties were assessed upon plaintiffs' importations accordingly.

It was also proven (and the same appears more fully and at large by Schedule Q, hereinafter set forth) that if the Mexican dollar had been reduced into the United States dollar, either at the rate $86\frac{7}{10}$ths cents per dollar or $84\frac{2}{10}$ths cents per dollar, much less duty would have been payable.

Duties were paid under protest on the basis of $101\frac{5}{10}$ths cents, or the value of the Mexican dollar, and defendant's counsel conceded that the plaintiffs had protested and appealed to the Secretary of the Treasury in due season as required by law, and that the Secretary of the Treasury had affirmed the action of the defendant, who was the collector at the port of New York, and that the suit was regularly instituted in proper time, according to the statutory preliminaries.

Although the protests were made on each and all of said
41 several importations, it is sufficient in this bill of exceptions to set forth copies of the protests in the following instances as indicating the claims of plaintiffs:

Protest.

To the Collector of the Port of New York:

We, hereby, protest against being compelled to pay duty, as charged by you, on our entries of merchandize from China per R. Bearse, May 20th, 1879, (W. H.)

Because in the calculations for said duty, the foreign silver currency, in which said invoice is made out, is not correctly estimated at the actual value of the pure metal of said currency of standard value as prescribed by law; and because the true value of the Mexican silver dollar is not correctly taken in ascertaining the value upon which duty should be charged; and because no true and lawful estimate of the value of said coin for the purpose of assessing
42 duty upon said foreign invoice has been made by the proper officers of the Government, pursuant to the method prescribed by law; and because any such lawful calculation, if made, will not result in the value of said coin, by which said invoice has been by you converted; and because the value of said coin, by you unlawfully assumed, is erroneous and greatly in excess of the real value thereof, and is estimated otherwise than by ascertaining the actual value in United States gold dollars of the pure metal of said coin of standard value; and because the actual value of the pure metal of the said standard coin instead of being, as improperly assumed, in and by your decision and liquidation, at about $\$1.01\frac{5}{10}$, in fact is much less, and does not exceed about from 84 to 86 cents, estimated in United States gold dollars; and because under these circumstances the duty assessed upon a calculation, as made in your liquidation, is unauthorized by law.

43 We hereby give notice of our dissatisfaction with your decision, and we claim that the said assessment of duty is not

authorized by law, and is therefore erroneous; and we pay the excess exacted upon the difference in dutiable value created by the circumstances aforesaid, in order to get possession of the goods.

We protest against this, and all future similar exactions, and claim a refund of the aforesaid excess.

We intend the duplicate hereof, filed herewith, to be transmitted by you to the Secretary of the Treasury, as an appeal to him from your decision.

Dated June 10th, 1879.

HADDEN & CO.
Per W. B. COUGHTRY,
Attorney.

A similar protest was filed applicable to the invoice by the S. R. Meade.

And a similar one to the invoices by the Challenge and
44 Lizzie Perry, except that this protest claims that the said value of Mexican dollar does not exceed from 85 to 87 cents, instead from 84 to 86 cents, as in the prior paper.

The following other protest was also shown to have been made applicable to the Moneta:

Protest.

STEWART AND LAWRENCE,
Custom-House and Forwarding Agents,
Warehouse, No. 32 Pine Street, New York.

To the Collector of Customs, Port of New York:

SIR: We do hereby protest against the payment of duty upon a valuation of $1.01\frac{5}{10}$ths dollars to the Mexican dollar, charged on eleven hundred twenty packages of merchandize imported by us in the bark Moneta, from Hong Kong, marked and numbered, as follows: April 24th, '79, H. & C., eight hundred seventy rolls C. matting, [R. S.] two hundred fifty rolls, claiming that under the existing laws said goods are only liable to a duty upon a
45 valuation of $99\frac{8\,0}{1\,0\,0}$ dollars to the Mexican dollar, as our invoices were dated Hong Kong, Dec. 18 and 20, 1878, previous to the change of valuation January 1, '79. We pay the amount exacted, in order to get possession of the goods, and claim to have the difference refunded.

Respectfully, HADDEN & CO.

New York, 17 May, 1879.

(Endorsed:) "2188. Hadden & Co. Moneta custom-house, New York. Received May 17, 1879."

Plaintiffs' counsel then offered in evidence an official circular of the Treasury Department relative to the value of the Mexican dollar.

To the introduction in evidence of this circular the defendant's counsel objected, on the ground that it is immaterial.

The court sustained the objection, excluded the evidence, and plaintiffs' counsel duly excepted to said ruling.

46 The excluded paper affected by said ruling is as follows:

(3670.)

Circular Relative to the Value of the Mexican and Trade Dollar.

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
WASHINGTON, D. C., *July* 25, 1878.

In consequence of the number of inquiries received relative to the value of the Mexican silver dollar, and the terms on which it is received at the mints, the following information is furnished:

Section 3584, Revised Statutes United States, declares that "No foreign gold or silver coins shall be a legal tender in the payment of debts."

The Mexican dollar, therefore, has only a value as bullion, which depends upon the price of silver. At the present price of silver bullion it is worth about 90.8 cents in gold per piece.

Its circulation as money in the United States is optional

47 and at whatever value may be agreed upon.

The United States trade dollar also is not a legal tender, and, therefore, has only a bullion value.

The standard silver dollar being a legal tender for all debts, public and private, is received at par at all Government offices in payment of dues, differing in this respect from the Mexican and trade dollar, which are not received.

Mexican dollars, as well as all other foreign silver coins, and United States trade dollars, are purchased at the mints at Philadelphia, San Francisco, and Carson, and the assay office at New York, at the equivalent of the London rate for silver bullion on the day of purchase, less one-half cent per ounce of fine silver contained.

All silver coins so purchased are melted and assayed, and the seller paid for the fine silver contained in standard silver dollars.

48 All parties desiring to sell foreign silver coins or trade dollars to the Government on the above terms, will send them at their own expense to the superintendent of the mint at Philadelphia, San Francisco, or Carson, or of the assay office at New York. Express charges on the silver dollars sent in return also to be paid by the seller.

All correspondence relative to silver coins so sent to be addressed to the superintendent of the mint or assay office to which they are forwarded.

The following table shows the bullion value in cents and tenths of a cent United States legal tender coin of a Mexican silver dollar of full legal weight and fineness at various London quotations for silver bullion, calculated at the par of exchange, $\$4.86\frac{65}{100}$ to the £ sterling:

49

London quotation in pence.	Value of Mexican dollar in cents.	London quotation in pence.	Value of Mexican dollar in cents.	London quotation in pence.	Value of Maxican dollar in cents.
50	86.1	52 3/8	90.8	55 1/8	95.6
50 1/8	86.5	53	91.2	55 3/8	96.
50 1/4	86.9	53 1/8	91.6	56	96.4
50 3/8	87.4	53 1/4	92.1	56 1/8	96.9
51	87.8	53 3/8	92.5	56 1/4	97.3
51 1/8	88.2	54	93	56 3/8	97.7
51 1/4	88.7	54 1/8	93.4	57	98.2
51 3/8	89.1	54 1/4	93.8	57 1/8	98.6
52	89.5	54 3/8	94.3	57 1/4	99.
52 1/8	89.9	55	94.7	57 3/8	99.4
52 1/4	90.4	55 1/8	95.1	58	99.9

NOTE.—The trade dollar is worth two-tenths of a cent more than the Mexican dollar at the respective quotations furnished. The deduction at the mint of one-half cent per ounce of fine silver contained amounts to about four mills on the dollar.

H. R. LINDERMAN,
Director of the Mint.

50 There was then read in evidence in plaintiffs' behalf the following depositions, taken under a commission duly issued for that purpose.

The interrogatories administered to Horatio C. Burchard and Frederick Eckfeldt, under said commission, and the answers thereto, were as follows:

Interrogatories administered to and the Answers thereto of Frederick Eckfeldt.

First. What is your name, residence, age, and occupation?

Answer. Frederick Eckfeldt; Washington, D. C.; forty; computer of bullion?

Second. Were you employed in 1878 and 1879 in the office of the director of the mint? If so, state how long, in what capacity, and what your duties were?

Answer. I was, during the whole period specified, as computer of bullion; partly to make calculations of value.

51 Third. What instructions, if any, did you receive from Dr. H. R. Linderman or your official superior concerning the calculations made by the director of the mint in the latter part of the year 1878 of the value of foreign silver coins in United States money of account?

Answer. Verbal instructions to make the calculations referred to.

Fourth. When did Dr. Linderman die or cease to act as director of the mint and who succeeded him until 1880?

Answer. Dr. Linderman died January 27th, 1879. R. E. Preston was acting director until March 5th, 1880. Horatio C. Burchard assumed the duties of director March 5, 1880.

Fifth. What acts did you perform in respect to the calculations or estimate of the values of foreign silver coins reported by the director of the mint to the Secretary of the Treasury, under date of
52 December 29th, 1878, and if you made or participated in making any or all of said calculations? Please to state on what basis and in what manner the same was made?

Answer. Performed the calculations referred to on the basis of the standard silver dollar. The calculations were made by comparing the pure metal in each foreign silver coin with the amount of pure metal in the United States standard silver dollar.

Sixth. What was the method in which, for the year 1879, the estimate in 1878 was made by the director of the mint of the values in United States monies of account of the Mexican dollar, of the rouble of Russia, of the rupee of India, of the dollar of Central America? Please refresh your recollection by the examination of any memoranda, books, papers, or official documents at your command, and answer this interrogatory fully and in detail.

Answer. By comparing the pure metal in the coins specified with the amount of pure metal in the United States
53 standard silver dollar.

Seventh. In making the calculations or estimates referred to in your answer to the last interrogatory, was the quantity of pure silver in the said foreign coins first ascertained or estimated, and the value of said pure silver then stated in the standard of United States gold dollars of the statutory weight ($25\frac{8}{10}$ grains) and fineness (900 to 1,000)? If not, was the value of said pure silver metal stated in United States silver currency; and, if so, describe that currency by its weight, fineness, and by the quantity of pure metal it contained?

Answer. The quantity of pure silver was ascertained from the coinage laws of the respective countries, prescribing the standard weight and standard fineness of said coins. The value of the quantity of pure silver was not stated in the standard of United States gold dollar, but in the United States standard silver
54 dollars of $412\frac{1}{2}$ grains weight, $\frac{9}{10}$ fineness, containing $371\frac{1}{4}$ grains of fine silver.

Eighth. How long has the method you describe of estimating the value of foreign silver coin prevailed in the office of the Director of the Mint? Was it followed in the years 1877, 1876, 1875, and 1874, or either of them?

Answer. In the year 1879 only. In 1874 the value of foreign silver coins was reduced to the basis of gold on the assumption that the ratio of $15\frac{1}{2}$ to 1 represented the relative value of silver to gold, but in 1875, 1876, 1877, and 1878 the market ratio of silver to gold fluctuated widely and continually, and the estimates for those years were based upon the United States trade dollars; that is, the fine

metal in each foreign silver coin was compared with the fine metal trade dollar.

55 Ninth. Were the estimates and calculations for 1880 made in the same manner? If not, describe how they were made and in what the difference consisted.

Answer. They were not; the estimates were based on the commercial value of the pure silver contained in the coin of full weight, expressed in terms of the standard unit of value of the United States, which, under the law, is declared to be the gold dollar of the standard weight of $25\frac{8}{10}$ grains. The commercial value of the pure silver was estimated on the basis of the London quotations, for a period of three months, immediately preceding the year 1880.

The difference consisted in this: That in the case of the year 1880, the foreign silver coins were estimated at their value, not as coins, but as bullion, and in 1879 they were estimated on the basis of the amount of silver declared by the law of February 28, 1878, to constitute a legal-tender silver dollar.

56 Tenth. If a calculation were made in the year 1878, for the year 1879, in the same manner as the calculations you refer to, for the year 1880, were made in or about 1879, what would be the result, in respect to the value about January 1st, 1879, in United States gold dollars of the following foreign silver coins or standards of value, namely: The Mexican dollar, the rouble of Russia, the rupee of India, the dollar of Central America, the Shanghai tael, and the Chefoo and Tientsin taels of China?

Answer. Mexican dollar, 86.7 cents; rouble of Russia, 63.8 cents; rupee of India, 37.9 cents; dollar of Central America, 79.8 cents.

The various taels of China are not foreign standard coins in circulation, and the value therefore is not estimated by the director of the mint.

57 Eleventh. Please state what was the value of the pure metal in the Mexican dollar, of standard value, as expressed in United States gold dollars, on or about the following dates: October 16th, November 17th and 28th, December 3rd, 18th and 20th, 1878, and January 3rd, 1879.

Answer:

October 16, 1878,	Mexican	dollar		86.6	cents.
November 11,	"	"	"	87.0	"
" 28,	"	"	"	87.4	"
December 3,	"	"	"	87.7	"
" 18,	"	"	"	86.1	"
" 20,	"	"	"	85.3	"
January 3, 1879,	"	"		85.5	"

Twelfth. Also state in the same way the value of the Shanghae tael, the Chefoo tael, and the Tientsin tael at the following specified dates: August 23rd, September 19th, October 1st, November 1st, 5th, 8th, 20th, 18th, December 3rd, 4th, 7th, 9th, 1878, and January 13th, 17th, 1879.

Answer. The value of the Chinese tael is not estimated by the director of the mint, for the reason given in reply tenth.

58 Thirteenth. Would the values you have given in answer to the last question be the values arrived at by following the method of calculation pursued in preparing the values proclaimed by the Treasury Department for the year 1880? If not, please state the difference, if any?

Answer. I have no personal knowledge of the method of estimating the value of Chinese taels, and cannot, therefore, answer.

Fourteenth. What were the values, respectively, of the United States silver dollar and of the trade dollar on or about December 29th, 1878; what were the values, respectively, on or about the following dates?

Answer. The value of the United States silver dollar on December 29th, 1878, was, by law, one dollar; the value of the trade dollar was 85.7 cents.

59 Fifteenth. What explanation will you give for the difference in the method of estimating the values of foreign silver coins in 1880 and the results of such methods of estimation from the methods pursued in years immediately preceding? State what instructions, if any, of the present director of the mint have come to your knowledge on the subject.

Answer. So far as I am able to state the law requiring this estimation of value is not sufficiently definite as to how the estimation must be made, and the construction of the law is an open question for the decision of those who are to execute it. The present director of the mint verbally instructed me to make the calculations, as specified in answer ninth.

Sixteenth. Was the value of all foreign silver coins estimated in the same general way as was pursued in cases you have specified?

Answer. The value of all foreign silver coins of countries adhering to the single silver standard was estimated as specified in the cases previously mentioned.

60 Seventeenth. Do you know of anything concerning the matters in question that may tend to the benefit and advantage of the plaintiffs? If so, declare the same fully and at large as if you had been particularly interrogated concerning the same.

Answer. I have no personal knowledge.

The interrogatories were signed W. B. Coughtry, plaintiffs' attorney, and the cross-interrogatories waived by Stewart L. Woodford, Esq., United States attorney, defendant's attorney, reserving the right to object to answers to the interrogatories upon the trial of the cause, upon the grounds that the interrogatories are immaterial, irrelevant, and incompetent.

The examination was taken, reduced to writing, and by the witness subscribed and affirmed to, on the 29th day of April, 1880, before A. J. Falls, Esq., commissioner, who duly certified to and en-
61 dorsed each page of the same. The witness also duly affirmed before the examination was taken.

Interrogatories Administered and the Answers thereto of Horatio C. Burchard.

First. What is your name, age, residence, and occupation?

Answer. Horatio C. Burchard; aged 54 years; Washington, D. C.; Director of the Mint.

Second. Were you employed in 1878 and 1879 in the office of the Director of the Mint? If so, state how long, in what capacity, and what your duties were.

Answer. I had no connection with the office prior to March 5, 1879.

Third. What instructions, if any, did you receive from Dr. H. R. Linderman, or your official superior, concerning the calculations made by the Director of the Mint in the latter part of the year 1878 of the value of foreign silver coins in United States money of account?

Answer. I had none.

62 Fourth. When did Dr. Linderman die or cease to act as Director of the Mint, and who succeeded him until 1880?

Answer. Dr. Linderman died, as I am informed, on the 27th day of January, 1879. I qualified as Director of the Mint March 5, 1879, and have held the office until the present time.

Fifth. What acts did you perform in respect to the calculations or estimate of the values of foreign silver coins reported by the Director of the Mint to the Secretary of the Treasury under date of December 29th, 1878, and if you made or participated in making any or all of said calculations, please to state on what basis and in what manner the same were made?

Answer. I did no acts and participated in no calculations in reference to the estimation of value of foreign coins at that time.

63 Sixth. What was the method in which, for the year 1879, the estimate in 1878 was made by the Director of the Mint of the values in United States monies of account of the Mexican dollar, of the rouble of Russia, of the rupee of India, of the dollar of Central America?

Please refresh your recollection by the examination of any memoranda, books, papers, or official documents at your command, and answer this interrogatory fully and in detail.

Answer. I have no knowledge of anything that was done by the director of the mint or the clerks in the mint bureau in estimating the value of foreign coins prior to March 5, 1879, excepting as shown by the records of the office, copies of which, for the estimation made for the year 1879, I attach herewith, marked "A," and made a part of this deposition.

Seventh. In making the calculations or estimates referred to in your answer to the last interrogatory, was the quantity of

64 pure silver in the said foreign coin first ascertained or estimated and the value of said pure silver then stated in the standard of United States gold dollars of the statutory weight of $25\frac{8}{10}$ grains and fineness (900 to 1000)? If not, was the value of said pure metal stated in United States silver currency? And if so, de-

scribe that currency by its weight, fineness, and by the quantity of pure metal it contains.

Answer. My answer to the sixth interrogatory answers this one.

Eighth. How long has the method you describe of estimating the value of foreign silver coin prevailed in the office of the director of the mint; was it followed in the years 1877, 1876, 1875, and 1874, or either of them?

Answer. My knowledge of the methods pursued prior to March 5, 1879, is confined to what is shown by the records, copies of which I attach herewith, for the years 1878, 1877, 1876, and 1875, marked, respectively, "B," "C," "D," and "E," and made a part of this deposition.

65 Ninth. Were the estimates and calculations for 1880 made in the same manner? If not, describe how they were made and in what the difference consisted.

Answer. I have not examined the records, which I attach, to ascertain what they show in regard to the action of my predecessor; they will speak for themselves. As to the action taken in making estimations for the year 1880, I will cause to be copied and exhibit the correspondence that took place between the Secretary of the Treasury and myself, and the official estimation and proclamation made, which I mark Exhibits "F" and "G," and make a part of this deposition. The opinion of the Secretary as to the manner in which the estimation should be made, which entirely coincides with my own views, was followed in making the estimation. I suppose that, prior to this estimation, instead of taking the bullion value of foreign silver coins their value was ascertained by comparing the

66 weight of the pure silver they contained with some authorized United States silver coin; at one time taking the standard silver dollar as a basis of comparison, another time the trade dollar, and another time upon the assumed ratio of silver to gold, of 15½ to one, as was the case in 1874 for the values for 1875. But of this I have no knowledge, except as a conclusion from what appears in the mint reports.

Tenth. If a calculation were made in the year 1878 for the year 1879 in the same manner as the calculations you refer to for the year 1880 were made in or about 1879, what would be the result, in respect to the value, about January 1st, 1879, in United States gold dollar of the following foreign silver coins or standards of value, namely, the Mexican dollar, the rouble of Russia, the rupee of India, the dollar of Central America, the Shanghae tael, and the Chefoo and Tienstin taels of China?

67 Answer. In answer to this interrogatory, Mr. Eckfeldt has made a computation which I believe to be substantially correct. The tael was omitted by him because there are no silver coins of that name, it being simply a weight of silver of varying fineness and value according to the locality where used.

Eleventh. Please state what was the value of the pure metal in the Mexican dollar of standard value, as expressed in United States gold dollars, on or about the following dates: October 16th, Novem-

ber 11th and 28th, December 3rd, 18th, and 20th, 1878, and January 3rd, 1879.

Answer. Mr. Eckfeldt has stated the values in his deposition, which are correct.

Twelfth. Also state in the same way the value of the Shanghae tael, the Chefoo tael, and the Tientsin tael at the following specified dates: August 23rd, September 19th, October 1st, November
68 1st, 5th, 8th, 20th, 18th, December 3rd, 4th, 7th, 9th, 1878, and January 13th, 17th, 1879.

Answer. Mr. Eckfeldt has computed and stated in his deposition the bullion value of the silver in these coins, based upon the quotations received at this office of the London market at the dates mentioned, and I believe this computation to be correct. The tael is omitted for the reason stated in my answer to preceding interrogatories.

Thirteenth. Would the values you have given in answer to the last question be the values arrived at by following the method of calculation pursued in preparing the values proclaimed by the Treasury Department for the year 1880? If not, please state the difference, if any.

Answer. No estimation was made for the year 1880 of the value of the tael by this office, and therefore I cannot answer the question.

Fourteenth. What were the values, respectively, of the
69 United States silver dollar and of the trade dollar on or about December 29th, 1878? What were the values, respectively, on or about the following dates?

Answer. The silver dollar, of course, was worth one dollar, being an unlimited legal-tender; the average commercial value of the trade dollar, at New York, for the month of December, 1879, was $98\frac{5}{10}$ cents; the value of the silver contained in the trade dollar at the current quotations for silver bullion was $86\frac{3}{10}$ cents; the commercial currency value of the trade dollar Dec. 30, 1878, was 98 cents; the value of the United States silver dollar on December 29, 1878, was, by law, one dollar; the value of the silver in the trade dollar, at the London market price for silver bullion, was 85.7 cents, and of the silver in the standard dollar, upon the same basis, about 84.2 cents.

Fifteenth. What explanation will you give for the difference
70 in the method of estimating the values of foreign silver coins, in 1880, and the results of such methods of estimation from the methods pursued in years immediately preceding? State what instructions, if any, of the present director of the mint have come to your knowledge on the subject.

Answer. I suppose that the estimations were made at each period, by each officer, according to the construction of the statute; my own, made for the year 1880, was made from the construction put upon the law, after the correspondence with the Secretary, which has already been referred to and attached herewith.

Sixteenth. Was the value of all foreign silver coins estimated in the same general way as was pursued in cases you have specified?

Answer. All that were embraced in the proclamation of the Secretary on the first of January, 1880, were those silver coins which
71 were the exclusive standards of value of the country for which the estimation was made.

Seventeenth. Do you know of anything concerning the matters in question that may tend to the benefit and advantage of the plaintiffs? If so, declare the same fully and at large, as if you had been particularly interrogated concerning the same.

Answer. Nothing.

The interrogatories were signed by W. B. Coughtry, plaintiffs' attorney, and the cross-interrogotories waived by Stewart L. Woodford, Esq., United States attorney, defendant's attorney, reserving the right to object to answers to the interrogatories upon the trial of the cause, upon the grounds that the interrogatories are immaterial, irrelevant, and incompetent.

The examination was taken, reduced to writing, and by the
72 witness subscribed and sworn to, on the 29th day of April, 1880, before A. J. Falls, Esq., commissioner, who duly certified to and endorsed each page of the same. The witness was also duly sworn before the examination was taken.

The following are the exhibits referred to in the deposition of Horatio C. Burchard, each being duly endorsed by the commissioner, A. J. Falls, Esq.:

73 EXHIBIT A.

DEC. 29, 1878.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

SIR: Section 3564 of the Rev. Statutes of the U. S. provide that the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and proclaimed on the first of January by the Secretary of the Treasury.

In accordance with the above section of law I have the honor to transmit herewith a table of estimates of values to be proclaimed January first, 1879.

The U. S. standard silver dollar, being now by law the monetary unit as regards silver in our coinage, it is proper that the monetary units of countries of the silver standard should be computed upon the basis of the dollar of 412½ grains. This necessitates a change in value of the standard coins of the countries of the silver standard.

74 With respect to the value of the Austrian florin, late despatches from the U. S. minister to Austria show that neither gold nor silver is in circulation as money in that empire, but that an irredemable paper currency is the universal measure of value.

From the fluctuations of paper as compared with both silver and gold it is almost impossible to fix upon a standard value for such currency.

By a recent law of Austria gold is to be the only money receivable after the first of January, 1879, in the payment of customs duties, and I therefore deem it advisable that in estimating the value of the Austrian monetary unit reference should be made only to the standard gold coin of 8 gulden, equivalent to 20 francs.

I am unable to find that any changes have been made in the standard fineness or standard weight of coins of countries of the gold standard or of the double standard.

These values therefore remain unchanged.

75 I have the honor to be, very respectfully,

H. R. LINDERMAN, *Director.*

(The table referred to in the foregoing letter is printed elsewhere in this record), *supra.*

76 EXHIBIT "B."

DEC. 22, 1877.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

SIR: Section 3564, Revised Statutes U. S., provides that the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

In accordance with the above section of law I have the honor to transmit herewith a table of estimates of value as proclaimed on the 1st day of January, 1877.

After a careful examination I am unable to find that there has been any change in the standard weight or standard fineness of the coins embraced in the list. No alterations of the values as given in the circular is called for.

The value of the depreciated Austrian paper currency is frequently compared by consuls with the gold florin as well as
77 with the silver florin, the monetary unit of that empire, and the dispute as to the basis for comparison has given rise to suits in court. Silver continues to be the money standard of the Austrian Empire, but it is probable that the foreign exchanges are regulated on the gold basis; and I therefore recommend for your consideration the propriety of inserting a foot-note in the forthcoming circular giving the value of the gold florin, or rather of the eight-florin gold piece, as $\$3.85\frac{39}{100}$ U. S. gold coin.

Very respectfully, H. R. LINDERMAN,
Director.

(The table referred to in the foregoing letter is printed elsewhere in this record), *supra.*

78 EXHIBIT "D."

DECEMBER 20, 1875.

Hon. B. H. BRISTOW,
Secretary of the Treasury.

SIR: I have the honor to present herewith my estimates of the values of foreign coins, in compliance with the provisions of the first section of the act of March 3, 1873, which requires "that the values of foreign coins, as expressed in the money of account of the U. S. shall be that of the pure metal of such coin of standard value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

Very respectfully, H. R. LINDERMAN,
Director.

(The table referred to in the foregoing letter is substantially printed elsewhere in this record), *supra.*

79 EXHIBIT "E."

DEC. 23, 1874.

Hon. BENJAMIN H. BRISTOW,
Secretary of the Treasury.

SIR: The first section of the act of March 3, 1873, requires that the value of foreign coins, as expressed in the money of account of the United States, shall be that of the pure metal of such coins of standard value, and that the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

My estimate of values, as required under the above stated provisions of law, will be found in the annexed tabular statements.

Gold.

Countries of the gold standard or double standard of gold and silver in fixed proportions. Values of the monetary units as expressed in the money of account of the United States. Denominations of standard coin.

80 Country.	Monetary units.	Standard.	Value in U. S. money of account.	Principal standard coins.
Argentine Republic.	Peso fuerte	Gold	$1.00	None.
Belgium	Franc	Gold and silver	.193	5, 10, & 20 francs.
Brazil	Milreis of 1,000 reis.	Gold	.545	None.
British Possessions in North America.	Dollar	Gold	1.00	
Bolivia	Dollar	Gold & silver	.965	Escudo, half Bolivia & Bolivia.
Bogota	Peso	Gold	.965	
Chili	Peso	Gold	.912	Condor doubloon & escudo.
Cuba	Peso	Gold	.925	
Denmark	Crown	Gold	.268	10 crowns & 20 crowns.
Egypt	Pound of 100 piasters.	Gold	4.974	5, 10, 25, & 50 piasters.
France	Franc.	Gold	.193	5, 10, & 20 francs.
Great Britain	Pound sterling.	Gold	4 866	Half sovereign and sovereign.
Greece	Drachma	Gold & silver	.193	5, 10, 20, 50, & 100 drachmas.
German Empire	Mark	Gold	.238	5, 10, and 20 marks.
Italy	Lira	Gold & silver	.193	5, 10, 20, 50, & 100 lire.
Japan	Yen	Gold	.997	1, 2, 5, 10, and 20 yen.
Liberia	Dollar	Gold	1.00	
Norway	Crown	Gold	.268	10 and 20 crowns.
Paraguay	Peso	Gold	1.00	
Porto Rico	Peso	Gold	.925	
Portugal	Milreis of 1,000 reis.	Gold	1.084	2, 5, and 10 milreis.
Sandwich Islands	Dollar	Gold	1.00	
Spain	Peseta	Gold and silver	.193	5, 10, 20, 500 & 100 pesetas.
Sweden	Crown	Gold	.268	10 crowns & 20 crowns.
Switzerland	Franc	Gold & silver	.193	5, 10, & 20 francs.
Turkey	Piaster	Gold	.043	25, 50, 100, 250, & 500 piasters.
Uruguay	Patacon	Gold	.949	

81 *Silver.*

Countries of the silver standard and values of the monetary units as expressed in the money of the United States.

Country.	*Monetary units.*	*Value in U. S. money.*	*Principal standard coins.*
Austria	Florin	$0.453	Florin.
Central America	Dollar	.918	Dollar.
Ecuador	Dollar	.918	Dollar.
Hayti	Dollar	.952	
India	Rupee of 16 annas	.436	
Mexico	Dollar	.998	5, 10, 25, & 50 centaro.
Netherlands	Florin	.385	Half florin, florin & 2½ florin.
Peru	Peso	.918	
Russia	Rouble of 100 copecks	.734	¼, ½, and 1 rouble.
Tripoli	Mahbub of 20 piasters	.829	
Tunis	Piasters of 16 caroubs	.118	
United States of Colombia	Peso	.918	

China is not included in the estimate, there being no coinage of either gold or silver in that empire.

Silver, however, is the measure or standard of value and which passes by weight.

The tael is the unit of the money of account. There is an imperial tael and also various local or commercial taels, the
82 following list of which has been prepared from information received from the U. S. legation in China:

In the port of Ningpo there are three kinds of taels in use, viz:

The Haikwan or customs tael.

The Shanghae or exchange tael.

The Kingpo or commercial tael.

100 Haikwan taels = 151 $\frac{87}{100}$ Mexican dollars.

1 " tael = $1.51½ in trade dollars.

100 Ningpo taels = 143½ Mexican dollars.

1 " tael = $1.43 $\frac{2}{100}$ in trade dollars.

100 Shanghae taels = 136 Mexican dollars.

1 " tael = $1.35 $\frac{7}{100}$ in trade dollars.

In the port of Foochow there are five taels, all varying in weight and values, viz:

Hooping tael	$1.37 $\frac{8}{100}$	in trade dollars
Foochow tael	1.34 $\frac{8}{100}$	" "
Haikwan tael	1.39½	" "
Canton tael	1.39 $\frac{4}{100}$	" "
Shanghae tael	1.38½	" "

It will be seen from the foregoing that while the Haikwan tael is

worth in Ningpo $1.51½, in Foochow it is only worth $1.39½, a discount of nearly 8 per cent, while the value of the Shanghae tael increases in Foochow nearly 2 per cent.

83 In the port of Shanghae there are two taels in common use, viz., the Shanghae and Haikwan. The consul at that port states that an assay of trade dollars made Sept. 27, 1873, determined the weight of 100 to be 72.68 taels, which would make the value of the tael 1.52\frac{8}{10}$ in trade dollars.

The consul at Canton writes that "between themselves the Chinese buy and sell in taels, and the value of the taels varies according to the agreement between the parties."

From information obtained from Swaton, prepared by the customs banker and linguist, there are five kinds of commercial tael, viz., Chihping, Yangping, Kuimping, Shangping, and Tuping.

"Chihping is the commercial tael.

"Yangping, Kuimping, and Shanping are used by foreign houses.

"Tuping by opium dealers.

"The Haikwan tael is taken by the customs as the standard weight, and all duties and dues are paid in 'Haikwan' taels of pure silver.

"100 taels of Haikwan Lycee are equal to 110 taels weight
84 of Mexican dollars, estimated at 7 mace 2 candaren each.

"$152.78 are equal to 100 taels.

"The Haikwan tael is also called Kuping, or treasury scale."

I have the honor to be, very respectfully,

H. R. LINDERMAN, *Director.*

85 EXHIBIT F.

DEC. 29, 1879.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

SIR: The money of account of the United States is required by the act of April 2, 1792, (Revised Statutes, sec. 3563,) to "be expressed in dollars or units, dimes or tenths," &c., "a dime being the tenth part of a dollar."

The coinage act of Feb. 12, 1873, (Revised Statutes, sec. 3511,) provides: "That the gold coins of the United States shall be a one dollar piece, which, at the standard weight of twenty-five and eight-tenth grains, shall be the unit of value," &c.

The act of March 3, 1873, (Revised Statutes, sec. 3564,) provides: "That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal in such coin of standard value, and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint; and be proclaimed on the
86 first day of January by the Secretary of the Treasury."

In estimating the value of coins of foreign countries where gold is the standard of value no difficulty is experienced, the value is readily ascertained by comparing the amount of pure gold contained with that in the gold dollar, but in silver coins the law does not definitely state what shall be the basis of comparison in esti-

mating the value of the pure metal of such coins, when silver is the standard of the country.

The coinage act of 1873, discontinued the coinage of the silver dollar of 412½ grains, and also failed to make provision that it should be a unit of value as in case of the one dollar gold piece, but it still remained an existing coin and a legal-tender to the amount of five dollars in any one payment. The trade dollar of 420 grains and subsidiary coins of 25 grains to the dollar were authorized by the same act and also constituted a legal-tender to a like amount, but
87 none of these coins were declared units or standards of value.

If it had been intended that the value of foreign silver coins should be ascertained by comparing the pure metal contained with that in the United States silver coins, the law failed to specify what silver coin or what quantity of silver should be the standard for valuation.

I therefore have the honor to request that you will furnish this office with your opinion as to whether, under the provisions of the act of March 3, 1873, referred to, the value of foreign silver coins should be estimated by comparing their weight and fineness with that of the silver dollar or other coins of silver the United States of the nominal value of one dollar, or by taking the commercial bullion value of the pure silver in such foreign silver coin, valued in gold dollars as units.

If computed by the former method, what silver coin should be the basis for comparison; and if by the latter method, in what
88 manner should the gold value of the pure silver in such foreign silver coin be ascertained?

Very respectfully,

HORATIO C. BURCHARD, *Director.*

89 EXHIBIT "G."

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *December* 30, 1879.

Hon. H. C. BURCHARD,
Director of the Mint.

SIR: I am in receipt of your letter of this date asking my opinion as to the basis on which estimates of the values of foreign silver coin should be made, under the provisions of section 3564, Revised Statutes.

In reply, I have to inform you that in my opinion the law clearly contemplates that the estimates should be based on the commercial value of the pure silver contained in the coin of full weight, expressed in terms of the standard unit of value of the United States, which, under the law, is declared to be the gold dollar of the standard weight of $25\frac{8}{10}$ grains. In estimating the commercial value of the pure silver in question as required by law, a
90 proper basis would seem to be the London quotations of such silver for a period immediately preceding the year for which

the estimate is made, and I would suggest that a period of three months be taken for this purpose.

Very respectfully, JOHN SHERMAN,
Secretary.

91 EXHIBIT "C."

DEC. 22, 1876.

Hon. L. M. MORRILL,
Secretary of the Treasury.

SIR: I have the honor to present herewith my estimate of the values of foreign coins, in compliance with the provisions of the first section of the act of March 3, 1873, which requires "that the values of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value," and that "the value of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

Very respectfully,

H. R. LINDERMAN, *Director.*

(The table referred to in the foregoing letter is substantially printed elsewhere in this record), *supra.*

92 The plaintiffs' counsel then offered in evidence the circular of the Treasury Department, dated Washington, January 1st, 1874, exhibiting the values of foreign currency as proclaimed by the Secretary of the Treasury at that date. To the introduction of which circular in evidence defendant's counsel objected, on the ground that it was immaterial.

The court sustained the objection and excluded the circular, and to the said ruling plaintiffs' counsel duly excepted.

The excluded circular affected by said ruling, or so much thereof as is useful to be herein set fourth, is as follows:

Circular exhibiting the values in United States money of account of the pure gold or silver, representing, respectively, the monetary units of foreign countries, and proclaiming the value of the standard coins in circulation of the various nations of the
93 world, in compliance with the act of March 3, 1873.

1873. Department No. 145. Mint Bureau, No. 6.

TREASURY DEPARTMENT,
WASHINGTON, D. C., *January* 1, 1874.

The first section of the act of March 3, 1873, provides "that the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the Secretary of the Treasury." The following tables have been prepared, and are published in compliance with the above-stated provisions of law:

94 TABLE A.—*Values in United States Money of account of Pure Gold or Silver representing the Monetary Units, respectively, of Foreign Countries.*

Country.	Monetary Units.	Standard.	Value in U. S. money of account.
Argentine Republic	Peso fuerte	Gold	$1.0000
Austria	Florin	Silver	.4760
Belgium	Franc	Gold & silver	.1930
Bolivia	Dollar	Silver	.9650
Brazil	Milreis of 1,000 reis	Gold	.5456
British Possessions in North America	Dollar	Gold	1.0000
Central America	Dollar	Silver	.9650
Chili	Peso	Gold	.9123
China	Tael	Pure silver	1.6100
Cuba	Peso	Gold	.9258
Denmark	Crown	Gold	.2680
Ecuador	Dollar	Silver	.9650
Egypt	Dollar of 20 piasters	Silver	1.0039
France	Franc	Gold & silver	.1930
Great Britain	Pound sterling	Gold	4.8665
Greece	Drachms	Silver	.1930
German Empire	Mark	Gold	.2382
Hayti	Dollar	Silver	1.0000
Jamaica	Pound sterling	Gold	4.8665
Japan	Yen	Gold	.9970
India	Rupee of 16 annas	Silver	.4584
Italy	Lira	Gold & silver	.1930
Liberia	Dollar	Gold	1.0000
95 Mexico	Dollar	Silver	1.0475
Netherlands	Florin	Silver	.4050
Norway	Crown	Gold	.2680
Paraguay	Peso	Gold	1.0000
Peru	Dollar	Silver	.9650
Porto Rico	Peso	Gold	.9258
Portugal	Milreis of 1.000 reis	Gold	1.0847
Russia	Roubles of 100 copecks	Silver	.7717
Sandwich Islands	Dollar	Gold	1.0000
Spain	Peseta of 100 centimes	Gold & silver	.1930
Sweden	Crown	Gold	.2680
Switzerland	Franc	Gold & silver	.1930
Tripoli	Walbub of 20 piasters	Silver	.8709
Tunis	Piasters of 16 caroubs	Silver	.1250
Turkey	Piaster	Gold	.0439
United States of Columbia	Peso	Silver	.9650
Uruguay	Patacon	Gold	.9498
Venezuela	Peso	Silver	.7773

NOTE.—Where silver is the legal standard and represents the unit of account, its value is reduced to the basis of gold on the assumption that the ratio of $15\frac{1}{2}$ to 1 represents the relative values of silver & gold.

96 TABLE B.—*Weights, Fineness, and Value of Foreign Coins, as determined by United States Mint Assays.*

Explanatory Remarks.

1. The weight is expressed in fractions of an ounce troy, agreeing with the terms used in the United States mints.

If it is desired to have the weight of any piece in grains, regard the thousandths of an ounce as integers, take their half, from which deduct four per cent. of that half, and the remainder will be grains.

2. The fineness is expressed in thousandth parts, *i. e.*, so many parts of pure gold or silver in 1,000 parts of the coin. The old caret system is generally abandoned, (except for jewelry,) but it may be worth while to say that $41\frac{2}{3}$ thousandths equal one caret.

3. The valuation of gold is a direct calculation from weight and fineness, at the legal rate of 25.8 grains, 900 fine, being equal to one dollar; or $20.672 (nearly) per ounce of fine gold.

97 Foreign coins, if converted into United States coins, will be subject to a charge of one-fifth of one per cent.

4. For the silver there is no fixed legal valuation as compared with gold. The value of the silver coins is computed at the rate of 120 cents per ounce, 900 fine, payable in subsidiary silver coin, that having been the mint price when the assays were made.

The gold value of silver is to be found in the bullion markets; at present it is about 113 cents per ounce, 900 fine.

5. These tables generally give the one principal coin of each country, from which the other sizes are easily reduced.

Thus, when the franc system is used, there are generally gold pieces of 40, 20, 10 and 5 francs, all in due proportion. But in silver the fractional coins are very often of less intrinsic value than

98 the normal coin, proportionally. These are seldom exported.

(Tables of gold and silver coins omitted.)

WM. A. RICHARDSON,
Secretary of the Treasury.

Plaintiffs' counsel then offered in evidence the circular of the Treasury Department, issued for a similar purpose, dated January 1st, 1875.

Defendant's counsel then objected to the same being read in evidence, upon the ground that the circular was immaterial.

The court sustained the objection, and plaintiffs' counsel duly excepted.

The excluded circular affected by said ruling is as follows:

Circular exhibiting the values in United States money of the pure gold or silver, representing, respectively, the monetary units

99 and standard coins of foreign countries, in compliance with the act of March 3, 1873.

1875. Department No. 2. Secretary's Office.

TREASURY DEPARTMENT,
WASHINGTON, D. C., *January* 1, 1875.

The first section of the act of March 3, 1873, provides "that the

value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

The estimates of values contained in the following table has been made by the director of the mint, and is hereby proclaimed, in compliance with the above-stated provisions of law:

Country.	Monetary unit.	Standard.	Value in U. S. money.	Standard coin.
Argentine Republic	Peso fuerte	Gold	$1.00	None.
Austria	Florin	Silver	.453	Florin.
Belgium	Franc	Gold & silver	.193	5, 10, and 20 francs.
Bolivia	Dollar	Gold & silver	.965	Escudo, ½ bolivar, & bolivar.
Brazil	Milreis of 1,000 reis.	Gold	.545	None.
British Possessions in North America	Dollar	Gold	1.00	
Bogota	Peso	Gold	.912	
Central America	Dollar	Silver	.918	Dollar.
Chili	Peso	Gold	.912	Condor, doubloon, & escudo.
Cuba	Peso	Gold	.925	
Denmark	Crown	Gold	.268	10 & 20 crowns.
Ecuador	Dollar	Silver	.918	Dollar.
Egypt	Pound of 100 piasters.	Gold	4.974	5, 10, 25, & 50 piasters.
France	Franc	Gold & silver	.193	5, 10, & 20 francs.
Great Britain	Pound sterling	Gold	4.866½	½ sovereign & sovereign.
Greece	Drachma	Gold & silver	.193	5, 10, 20, 50, & 100 drachmas.
German Empire	Mark	Gold	.238	5, 10, & 20 marks.
Hayti	Dollar	Silver	.952	
Japan	Yen	Gold	.997	1, 2, 5, 10, & 20 yen.
India	Rupee of 16 annas.	Silver	.436	
Italy	Lira	Gold & silver	.193	5, 10, 20, 50, & 100 lire.
Liberia	Dollar	Gold	1.00	
Mexico	Dollar	Silver	.998	Peso or dollar, 5, 10, 25, & 50 centavo.
Netherlands	Florin	Silver	.385	½ florin, florin, & 2½ florins.
Norway	Crown	Gold	.268	10 & 20 crowns.
Paraguay	Peso	Gold	1.00	
Peru	Dollar	Silver	.918	
101 Porto Rico	Peso	Gold	.925	
Portugal	Milreis of 1,000 reis.	Gold	1.084	2, 5, & 10 milreis.
Russia	Rouble of 100 copecks.	Silver	.734	¼, ½, & 1 rouble.
Sandwich Islands	Dollar	Gold	1.00	

Country.	Monetary unit.	Standard.	Value in U. S. money.	Standard coin.
Spain	Peseta of 100 centimes.	Gold & silver	.193	5, 10, 20, 50, & 100 pesetas.
Sweden	Crown	Gold	.268	10 & 20 crowns.
Switzerland	Franc	Gold & silver	.193	5, 10, & 20 francs.
Tripoli	Mahbub of 20 piasters.	Silver	.829	
Tunis	Piaster of 16 caroubs.	Silver	.118	
Turkey	Piaster	Gold	.043	25, 50, 100, 250, and 500 piasters.
United States of Columbia.	Peso	Silver	.918	
Uruguay	Patacon	Gold	.949	

B. H. BRISTOW,
Secretary of the Treasury.

Plaintiffs' counsel then offered in evidence a similar circular of the Treasury Department, issued for the same purpose for the year 1876.

Defendant's counsel objected to the reading of the same in evidence, upon the ground that it was immaterial to the issues involved in this action.

The court sustained the objection and plaintiffs' counsel duly excepted.

102 The circular of 1876, need not be here inserted, because it is substantially the same as the circular of 1875.

Plaintiffs' counsel then offered in evidence the Department circular, for the year 1877, which, under like objection and ruling, was excluded by the court, and plaintiffs' counsel duly excepted.

The circular of 1877 need not be here inserted, because it is in substantially the same terms and gives the same values as the circular last above printed.

Plaintiffs' counsel then read in evidence, by permission of the court, the following circulars of the Treasury Department, dated January 1st, 1878, and January 1st, 1879.

The circulars were as follows:

Circular exhibiting the values in United States money of the pure gold or silver, representing, respectively, the monetary units and standard coins of foreign countries, in compliance with the act of March 3, 1873.

1878. Department No. 1. Secretary's Office.

TREASURY DEPARTMENT,
WASHINGTON, D. C., *January* 1, 1878.

103 The first section of the act of March 3, 1873, Statutes at Large, volume 17, page 602, reproduced in section 3564 of the

Revised Statutes, provides "that the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the director of the mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

The estimate of values contained in the following table has been made by the director of the mint, and is hereby proclaimed, in compliance with the above provisions of law:

Country.	Monetary unit.	Standard.	Value in U. S. money.	Standard coin.
Austria	Florin	Silver	$0.453	Florin.
Belgium	Franc	Gold & silver	.193	5, 10, & 20 francs.
Bolivia	Dollar	Gold & silver	.965	Escudo, $\frac{1}{2}$ bolivar, & bolivar.
Brazil	Milreis of 1,000 reis.	Gold	.545	None.
British Possessions in North America	Dollar	Gold	1.00	
104				
Bogota	Peso	Gold	.965	
Central America	Dollar	Silver	.918	Dollar.
Chili	Peso	Gold	.912	Condor, doubloon, & escudo.
Denmark	Crown	Gold	.268	10 & 20 crowns.
Ecuador	Dollar	Silver	.918	Dollar.
Egypt	Pound of 100 piasters.	Gold	4.974	5, 20, 25, & 50 piasters
France	Franc	Gold & silver	.193	5, 10, & 20 francs.
Great Britain	Pound sterling	Gold	4.866$\frac{1}{2}$	$\frac{1}{2}$ sovereign & sovereign.
Greece	Drachma	Gold & silver	.193	5, 10, 20, 50, & 100 drachmas.
German Empire	Mark	Gold	.238	5, 10, & 20 marks.
Japan	Yen	Gold	.997	1, 2, 5, 10, & 20 yen.
India	Rupee of 16 annas.	Silver	.436	
Italy	Lira	Gold & silver	.193	5, 10, 20, 50, & 100 lire.
Liberia	Dollar	Gold	1.00	
Mexico	Dollar	Silver	.998	Peso or dollar, 5, 10, 25, & 50 centavo.
Netherlands	Florin	Gold & silver	.385	Florin, ten guldens gold ($4.019).
Norway	Crown	Gold	.268	10 & 20 crowns.
Peru	Dollar	Silver	.918	
Portugal	Milreis of 1,000 reis.	Gold	1.08	2, 5, & 10 milreis.
Russia	Rouble of 100 copecks.	Silver	.734	$\frac{1}{4}$, $\frac{1}{2}$, & 1 rouble.
Sandwich Islands	Dollar	Gold	1.00	

Country.	Monetary unit.	Standard.	Value in U. S. money.	Standard coin.
Spain	Peseta of 100 centimes.	Gold & silver	.193	5, 10, 20, 50, & 100 piasters.
Sweden	Crown	Gold	.268	10 & 20 crowns.
Switzerland	Franc	Gold & silver	.193	5, 10, & 20 francs.
Tripoli	Mahbub of 20 piasters.	Silver	.829	
Tunis	Piaster of 16 caroubs.	Silver	.118	
Turkey	Piaster	Gold	.043	25, 50, 100, 250, and 500 piasters.
105				
United States of Columbia.	Peso	Silver	.918	

The above rates will be taken in estimating the values of all foreign merchandise made out in any of said currencies imported on or after January 1, 1878.

I am, very respectfully, JOHN SHERMAN,
Secretary of the Treasury.

Circular exhibiting the values in United States money of the pure gold or silver, representing, respectively, the monetary units and standard coins of foreign countries, in compliance with the act of March 3, 1873:

1879. Department No. 1. Secretary's Office.

TREASURY DEPARTMENT,
WASHINGTON, D. C., *January* 1, 1879.

The first section of the act of March 3, 1873, Statutes at Large, volume 17, page 602, reproduced in section 3564 of the Re-
106 vised Statutes, provides "that the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value," and that "the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury.

The estimate of values contained in the following table has been made by the Director of the Mint, and is hereby proclaimed in compliance with the above stated provisions of law:

Country.	Monetary unit.	Standard.	Value in U. S. money.	Standard coin.
Austria	Florin			8 gulden or 20 francs, gold $3.85-89.
Belgium	Franc	Gold & silver	.193	5, 10, & 20 francs.
Bolivia	Dollar	Gold & silver	.965	Escudo, ½ bolivar and bolivar.
Brazil	Milreis of 1,000 reis.	Gold	.545	None.
British Possessions in N. A.	Dollar	Gold	$1.00	
Bogota	Peso	Gold	.965	
Central America	Dollar	Silver	.935	Dollar.
Chili	Peso	Gold	.912	Condor, doubloon & escudo.
Denmark	Crown	Gold	.268	10 & 20 crowns.
Ecuador	Dollar	Silver	.935	Dollar.
Egypt	Pound of 100 piasters.	Gold	4.974	5, 10, 25, & 50 piasters.
France	Franc	Gold & silver	.193	5, 10, and 20 francs.
Great Britain	Pound sterling.	Gold	4.866½	½ sovereign & sovereign.
Greece	Drachma	Gold & silver	.193	5, 10, 20, 50, & 100 drachmas.
German Empire	Mark	Gold	.238	5, 10, & 20 marks.
Japan	Yen	Gold	.997	1, 2, 5, 10, & 20 yen.
India	Rupee of 16 annas.	Silver	.444	
Italy	Lira	Gold & silver	.193	5, 10, 20, 50, & 100 lire.
Liberia	Dollar	Gold	1.00	
Mexico	Dollar	Silver	1.015	Peso or dollar, 5, 10, 25, & 50 centavo.
Netherlands	Florin	Gold & silver	.385	Florin, ten guldens, gold ($4.019).
Norway	Crown	Gold	.268	10 & 20 crowns.
Peru	Dollar	Silver	.935	
Portugal	Milreis of 1,000 reis.	Gold	1.08	2, 5, & 10 milreis.
Russia	Rouble of 100 copecks.	Silver	.748	¼, ½, & 1 rouble.
Sandwich Islands	Dollar	Gold	1.00	
Spain	Peseta of 100 centimes.	Gold & silver	.193	5, 10, 20, 50, & 100 pesetas.
Sweden	Crown	Gold	.268	10 and 20 crowns.
Switzerland	Franc	Gold & silver	.193	5, 10, & 20 francs.
Tripoli	Mahbub of 20 piasters.	Silver	.844	
Turkey	Piaster	Gold	.043	25, 50, 100, 250, & 500 piasters.
United States of Columbia.	Peso	Silver	.935	

108 The above rates will be taken in estimating the values of all foreign merchandise made out in any of said currencies, imported on or after January 1, 1879.

JOHN SHERMAN,
Secretary of the Treasury.

Plaintiffs' counsel then offered in evidence the circular on the subject, dated January 1st, 1880, issued by the Treasury Department.

Defendant's counsel objected to the reading of the same in evidence, on the ground that it was immaterial to any of the issues involved in this action.

The court sustained the objection, excluded the circular, and plaintiffs' counsel excepted.

The excluded paper affected by said ruling is as follows:

Circular estimating and proclaiming, in United States money of account, the values of the standard coins in circulation of the various nations of the world.

109 1880. Department No. 1. Secretary's Office.

TREASURY DEPARTMENT, BUREAU OF THE MINT,
WASHINGTON, D. C., *January* 1, 1880.

Hon. JOHN SHERMAN,
Secretary of the Treasury.

SIR: In pursuance of the provisions of section 3564 of the Revised Statutes of the United States, I have estimated the values of the standard coins in circulation of the various nations of the world, and submit the same in the accompanying table.

Very respectfully, HORATIO C. BURCHARD,
Director of the Mint.

Estimate of Values of Foreign Coins.

Country.	Monetary unit.	Standard.	Value in U. S. money.	Standard coin.
Austria	Florin	Silver	.413	
Belgium	Franc	Gold and silver	.193	5, 10, & 20 francs.
Bolivia	Boliviano	Silver	.836	Boliviano.
Brazil	Milreis of 1,000 reis.	Gold	.545	
British Possessions in N. A.	Dollar	Gold	$1.00	
Central America.	Peso	Silver	.836	Peso.
Chili	Peso	Gold	.912	Condor, doubloon & escudo.
Denmark	Crown	Gold	.268	10 & 20 crowns.
Ecuador	Peso	Silver	.836	Peso.
Egypt	Pound of 100 piasters.	Gold	4.974	5, 10, 25, & 50 piasters.
France	Franc.	Gold & silver	.193	5, 10, & 20 francs.
Great Britain	Pound sterling.	Gold	4 86$\frac{1}{2}$	$\frac{1}{2}$ sovereign & sovereign.
Greece	Drachma	Gold & silver	.193	5, 10, 20, 50, & 100 drachmas.
German Empire	Mark	Gold	.238	5, 10, & 20 marks.
India	Rupee of 16 annas.	Silver	.397	
Italy	Lira	Gold & silver	.193	5, 10, 20, 50, & 100 lire.
Japan	Yen (gold)	Gold and silver	.997	1, 2, 5, 10, & 20 yen.
Liberia	Dollar	Gold	1.00	
Mexico	Dollar	Silver	.909	Peso or dollar, 5, 10, 25, & 50 centavo.
Netherlands	Florin	Gold & silver	.402	
Norway	Crown	Gold	.268	10 & 20 crowns.
Peru	Sol	Silver	.836	Sol.
Portugal	Milreis of 1,000 reis.	Gold	1.08	2, 5, & 10 milreis.
Russia	Rouble of 100 copecks.	Silver	.669	$\frac{1}{4}$, $\frac{1}{2}$, & 1 rouble.
Sandwich Islands	Dollar	Gold	1.00	
Spain	Peseta of 100 centimes.	Gold & silver	.193	5, 10, 20, 50, & 100 pesetas.
Sweden	Crown	Gold	.268	10 & 20 crowns.
Switzerland	Franc	Gold & silver	.193	5, 10, & 20 francs.
Tripoli	Mahbub of 20 piasters.	Silver	.748	
Turkey	Piaster	Gold	.044	25, 50, 100, 250, & 500 piasters.
United States of Columbia.	Peso	Silver	.836	Peso.

111 TREASURY DEPARTMENT,
WASHINGTON, D. C., *January* 1, 1880.

The foregoing estimation, made by the director of the mint, of the value of the foreign coins above mentioned, I hereby proclaim to be the value of such coins expressed in the money of account of the United States, and to be taken in estimating the value of all foreign merchandise, made out in any of said currencies, imported on or after January 1, 1880.

JOHN SHERMAN,
Secretary of the Treasury.

Plaintiffs' counsel then offered in evidence the following letter, written in reply to an agent of the plaintiffs, from the Treasury Department by the director of the mint; said letter was offered for the purpose of completing the plaintiffs' proofs as to the method by which the Mexican silver dollar was converted into United States money, and showing the number of grains of pure silver in the Mexican dollar.

112 The defendant's counsel objected to reading the same in evidence, on the ground that it was immaterial to any of the issues involved in this action.

The court excluded the evidence, and plaintiffs' counsel duly excepted.

The excluded paper affected by said ruling is as follows:

TREASURY DEPARTMENT,
OFFICE OF THE DIRECTOR OF THE MINT,
WASHINGTON, D. C., *March* 13, 1879.

JAS. D. B. PAINE, Esq.,
74 *Pine St., New York.*

SIR: Your letter of the 11th instant, addressed to the director of the mint at Philadelphia, requesting to be informed upon what basis the valuation of silver coins of foreign countries was made, as proclaimed by the Secretary of the Treasury January 1, 1879, has been transmitted by the superintendent of that mint to this office.

113 The act of February 28, 1878, authorizing the coinage of the standard silver dollar, fixes the weight thereof at 412½ grains of standard silver, and the values of coins of foreign countries of the silver standard, as proclaimed by the Secretary of the Treasury in the circular of January 1, 1879, were arrived at by comparing the amount of pure silver contained in the respective standard coins with the amount of pure silver contained in the United States standard silver dollar, viz., 371¼ grains troy.

Very respectfully,

HORATIO C. BURCHARD, *Director.*

The plaintiffs then proved that the dutiable value of their invoices, if estimated with the Mexican dollar taken at $101\frac{5}{10}$ths *dollars*, would be the amount in each invoice specified in the aforesaid Schedule "Q;" if the value of the Mexican dollar, however,

114 was taken at other rates as shown by the testimony to be its value as stated at the dates of the invoices, or at the dates of the entries, then the dutiable values would be as severally specified in the several columns of the said Schedule "Q." Schedule "Q" is a compilation from the invoices, entries, testimony hereinbefore stated.

The following is the schedule referred to:

SCHEDULE "Q."

Statement of Difference of Values of the Mexican Dollar.

Date of invoice.	Vessel.	Date of entry.	Dutiable value in Mex. doll's.	Reduced at 1.01.05.	Reduced at .867.	Reduced at .842.	Reduced at value at date of inv.
1879.		1879.					
Jan. 3	S. R. Bearse.	May 20	811 46	823 63	703 53	683 24	693 79
1878.							
Oct. 16	S. R. Mead	Feb. 27	22,023 63	22,534 28	20,094 74	17,544 14	19,062 72
Sep. 13 & Aug. 23.	Athene	M'ch 22	11,866 08	12,044 07	10,287 89	9,994 23	} Value not given in testimony
Nov. 8–11	Challenge	" 3	3,039 91	3,085 50	2,635 60	2,559 60	
Nov. 28	Lizzie Perry	Ap'l 14	7,701 06	7,816 57	6,676 84	6,484 29	6,730 72
Dec. 20	Moneta	" 24	6,675 08	6,775 91	5,787 88	5,621 00	5,994 44
" 3	do.	" "	4,367 77	4,433 28	3,786 85	3,677 66	3,830 53

115 *Differences of Duties made by Calculations at Gold Values, as Compared with Rate Fixed by Sec'y of Treasury.*

Vessel.	Date of entry.	Refund.			
		If Mexican dollar is valued at 101.05.	If at .867	If at .842.	If at its value at date of inv.
	1879.				
S. R. Bearse	May 20	None.	36 03	42 11	38 95
S. R. Mead	Feb. 27	"	947 86	1,443 04	984 47
Athene	M'ch 22	"	526 86	615 86	} Val. not given in test'y.
Challenge	" 3	"	134 97	157 77	
Lizzie Perry	Ap'l 14	"	341 93	399 69	325 76
Moneta	" 22	"	296 41	346 46	324 44
Do.	" "	"	193 94	226 59	180 84
			2,478 00	3,231 63	1,854 45

Plaintiffs' counsel then read in evidence the following extract from the Treasury regulations of 1874, part 8th, chapter 1:

Computation of Duties.

Reduction of invoice value to money of account of the United States.

Article 993. The invoice values of foreign merchandise im-
116 ported into the United States shall hereafter be reduced to the money of account of the United States; that is to say, the standard gold dollar of $25\frac{8}{10}$ grains troy, total weight, and nine-tenths, or $23\frac{22}{100}$ grains, troy weight, of pure gold, in accordance with the rates of values determined as required by law, and in the following manner:

First. Where the standard value of a foreign currency has been proclaimed by the Secretary of the Treasury, in the manner provided by law, that value is to be taken in all cases in estimating custom duties, unless collectors have been otherwise instructed, or unless a depreciation of the value of the foreign currency expressed in an invoice, from the standard of that currency, shall be shown by consular certificate thereunto attached.

Secondly. Where the standard value of a foreign currency has not been proclaimed by the Secretary of the Treasury in the
117 manner provided by law, an invoice expressed in such currency must be accompanied by a consular certificate showing its value in standard gold dollars of the United States.

Article 994. When silver is the legal standard of a foreign currency, and represents the unit of accounts, its value is to be reduced to the basis of gold, on the assumption that the ratio of $51\frac{1}{2}$ to 1, or such other ratio as may be from time to time established, represents the relative values of silver and gold.

Article 1000. Refunds of excessive duties arising from the rate at which collectors estimate the values of foreign currencies cannot be made, unless duties were paid under due protest and appeal.

Plaintiffs' counsel here referred the court, by way of infor-
118 mation, to Treasury regulations of 1857, page 140, section 5, articles 214 & 215. The articles read as follows:

Article 214. The law requires invoices of merchandise imported into the United States, and subject to an *ad valorem* duty, to be made out in the currency of the country or place from which the importation is made. In the estimation of the value of imports, in order to the assessment of duties, the currency of the invoice must be converted into money of the United States according to the rates of value determined in the following modes, to wit:

Article 215. First. Where the value of the foreign currency is fixed at specified rates by a law of the United States, that value is to be taken in all cases in estimating the duties, unless collectors shall have been otherwise previously instructed by this De-
119 partment, or a depreciation of the value of the foreign currency is duly shown by consular certificate attached to the invoice. Second. Where the value of the foreign currency is not

fixed by any law of the United States the invoice must be accompanied by a consular certificate showing its value in Spanish or United States silver dollars.

The foregoing is the substance of all the testimony offered, and at this point the plaintiffs rested.

The defendant offered no evidence, but made a motion that the court direct the jury to find a verdict for the defendant.

The plaintiffs counsel resisted said motion and moved for a direction from the court that the jury find a verdict for the plaintiffs for an amount to be stated by the court, or for an amount to
120 be determined by the jury as the court may advise; and in making said motion plaintiffs reserved the right, if said motion was denied, to go to the jury upon all the evidence in the case.

The plaintiffs' motion was thereupon denied, and plaintiffs' counsel duly excepted.

Plaintiffs' counsel then requested the court to submit to the jury the question whether the evidence does not show that there was a fraudulent exaction and a fraudulent conversion of the invoice value.

This the court refused, and plaintiffs' counsel duly excepted.

Plaintiffs then asked the court to submit to the jury the question whether the evidence does not show there was an irregularity in the estimate of the director of the mint, and consequently in the action of the Secretary, and defendant's decision based thereon.

This the court refused, and plaintiffs counsel duly excepted.

121 Plaintiffs then asked the court to submit to the jury the question whether there was not an irregularity in the assessment and liquidation of duties.

This the court refused, and plaintiffs' counsel duly excepted.

Plaintiffs then asked the court to submit to the jury the question whether there was not an illegality in the action of the Treasury officials and of the defendant.

This the court refused, and plaintiffs' counsel duly excepted.

Plaintiffs then asked the court to submit to the jury the question whether the evidence does not show that the director of the mint and the Secretary did not comply with the law.

This the court refused, and plaintiffs' counsel duly excepted.

Plaintiffs also asked the court to submit to the jury the question whether the evidence does not establish that the proclama-
122 tion of the Secretary of the Treasury for 1879 was not, in fact, based on the standard established by statute, namely, the value of the pure metal in the standard Mexican dollar.

This the court refused, and plaintiffs' counsel duly excepted.

The court then granted the motion of the defendant for a direction in favor of the defendant; to which direction plaintiffs' counsel duly excepted.

The jury then, pursuing said direction, rendered a verdict for the defendant.

And inasmuch as the foregoing matters of fact and law, and the said several exceptions, do not appear by the judgment record in

this case, therefore, on the prayer of the plaintiffs' counsel, the foregoing has been settled and signed by the judge who tried the same as and for the plaintiffs' bill of exceptions in this cause this
123 18th day of Jan'y, 1881, at the aforesaid term of said court.

N. SHIPMAN, *Judge.* [L. S.]

(Endorsed:) November 12th, 1881. The within engrossed bill conforms with the bill as settled. S. L. Woodford, p's' att'y. 5936. U. S. circuit court. W. A. Hadden *et als. vs.* Edwin A. Merritt, coll'r. Bill of exceptions. W. B. Coughtry, pl'ffs' att'y, 167 Broadway, N. Y. city. U. S. circuit court. Filed Mar. 20, 1882. Joseph M. Deuel, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 269. James E. S. Hadden, Harold F. Hadden, and Francis Pott, surviving partners, plaintiffs in error, *vs.* Edwin A. Merritt, collector of the port of New York. Filed 19th September, 1882.

Office Supreme Court U. S.
FILED.
APR 2 1885
JAMES H. McKENNEY.
CLERK.

UNITED STATES SUPREME COURT,

OCTOBER TERM 1884. NO. 269.

WILLIAM A. HADDEN et al.,
Plaintiffs in Error,

vs.

EDWIN A. MERRITT, Collector, &c.,
Defendant in Error.

BRIEF OF PLAINTIFFS IN ERROR.

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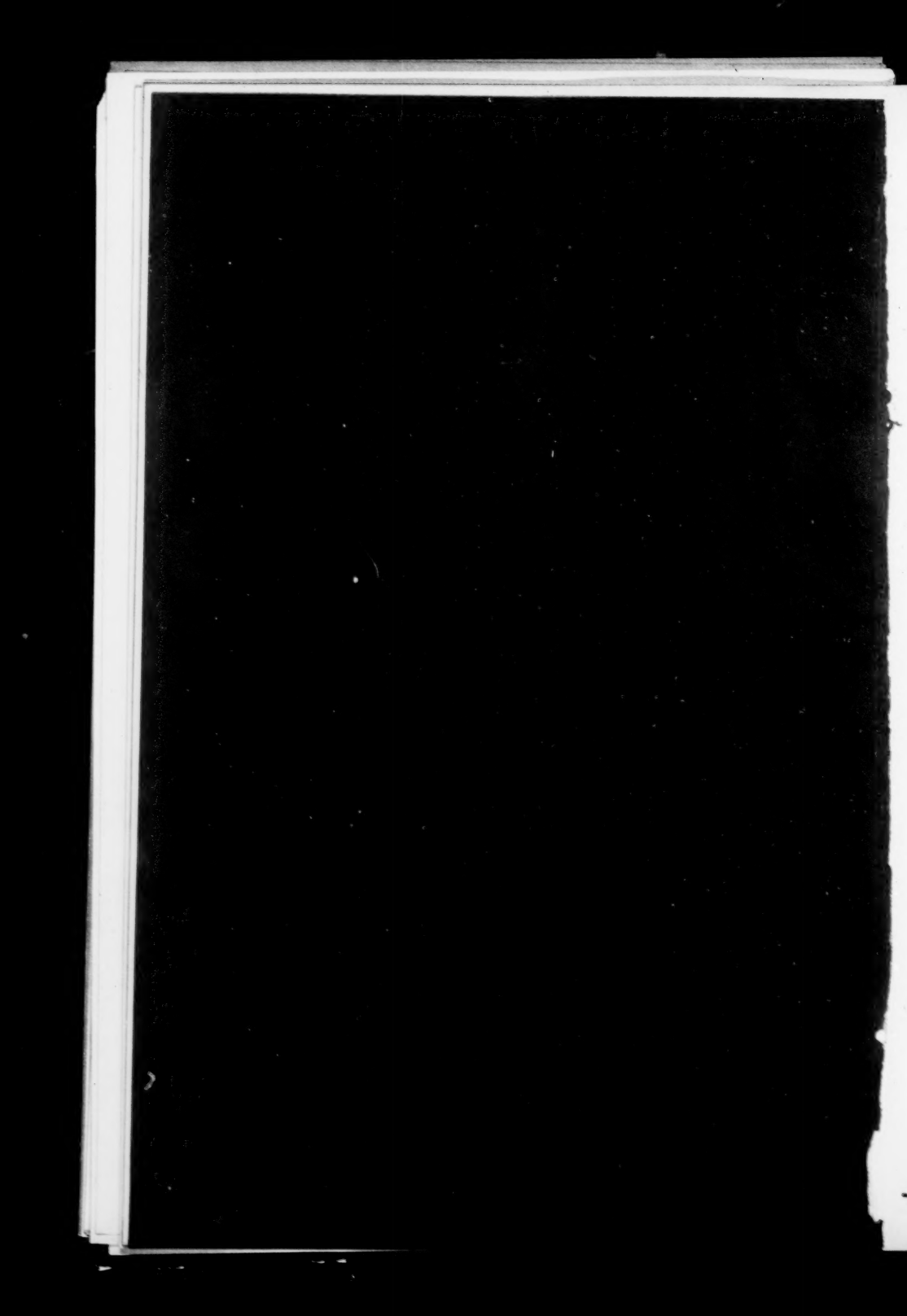

U. S. Supreme Court.

WILLIAM A. HADDEN ET AL.,
Plaintiff in Error,

vs.

EDWIN A. MERRITT, Collector, &c.,
Defendant in Error.

October Term, 1884.
No. 269.

Brief of Plaintiff in Error on Bill of Exceptions filed in the Circuit Court of the United States for the Southern District of New York, in an action tried at the October Term, 1880, arising out of the following facts:

STATEMENT OF CASE.

Plaintiffs were partners doing business under the firm name of Hadden & Company, engaged in importing merchandise from China, and in the latter part of 1878 and the early part of 1879 they imported from China seven different invoices of matting and other merchandise, whose value was made out in the currency of the country whence the goods were exported, to wit: in Mexican silver dollars. The dates of said entries were between February 27th and May 20th, 1879, inclusive. All the importations covered by such invoices were subject to an *ad valorem* duty of 35 per cent. In converting the value of said several invoices as expressed therein, from Mexican silver dollars into the value by which the actual *ad valorem* duty upon said invoices was to be ascertained, the dutiable value was arrived at in each case by estimating the value of the Mexican dollar in accordance with the value of such coin as estimated by the Director of the Mint and proclaimed by the Secretary of the Treas-

ury on the first day of January, 1879, and the value of said Mexican dollar so ascertained, estimated and proclaimed was 101 $\frac{5}{10}$ dollars, and duties were assessed upon the importations above described accordingly. The value of the "pure metal" of the Mexican dollar "of standard value" "expressed in the money of account of the United States," to wit: the standard gold dollar of the United States, varied from 84 $\frac{2}{10}$ cents to 86 $\frac{7}{10}$ cents per dollar during the time of said importations. Plaintiffs in error claim that the duties exacted by the Collector upon so much of said values as was represented by the difference between 84 $\frac{2}{10}$ or 86 $\frac{7}{10}$ per cent and 101 $\frac{5}{10}$ per cent. of the value of said invoices as represented in Mexican dollars, were not authorized by law, and this suit is brought to recover such excess.

The questions suggested in the foregoing statement are raised in the following manner:

1st. Plaintiffs' complaints and bills of particulars, in the two suits (which were consolidated), show the importations of merchandise, name of vessel, country whence exported, and other particulars required by the statute (see fols. 21–26), also the payment of duties, protest and appeals, &c.

2d. The answer of the defendant admits the receipt of the moneys paid as duties as alleged in the complaint, and that said amounts were due from the plaintiffs to the United States by law; also admits the filing of the protests and denies any knowledge as to their regularity.

3d. The evidence adduced by the plaintiffs upon the trial was proof as to the entry of the merchandise and payment of duties upon invoices of goods from China, made out in the currency of that country, to wit, Mexican silver dollars (fol. 38), and that the Custom House in converting the value of said invoices from Mexican silver dollars into the value by which the actual *ad volorem* duty upon such invoices was ascertained, arrived at the dutiable value by estimating the value of the Mexican silver dollar, in accordance with the value of such coin as estimated by the Director of the Mint, and proclaimed by the Secretary of the Treasury, on January 1, 1879, the year during which said importations were made (fol. 39). Said Mexican dollar so ascertained, was equal to 101 $\frac{5}{10}$ dollars and duties were assessed upon plaintiffs' importations accordingly. Plaintiffs protested regularly. By the depositions of the Director of the Mint and his subordinates it was proved that for the year 1874 the Director of the Mint estimated the value of the Mexican dollar by finding the quan-

tity of pure silver therein, and comparing it with the standard gold dollar of the United States, in the ratio of $15\frac{1}{2}$ to 1. In 1875, 1876, 1877 and 1878, the value of the Mexican dollar was estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, by comparing the pure metal in said dollar with the pure metal in the United States trade dollar. In 1879, the value of the the Mexican dollar, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, was obtained by taking the quantity of pure silver in said Mexican dollar and stating its value as compared with the silver in the United States silver dollar of 412.5 grains weight, $\frac{9}{10}$ fineness (see fols. 51–56, 62–65). The value of the pure metal in the Mexican dollar of standard value as expressed in United States gold dollars about the time of the importations ranged from $86\frac{6}{10}$ cents to $85\frac{5}{10}$ cents (fol. 57).

The defendant offered no evidence (fol. 119), but moved the Court to direct a verdict for the defendant. Plaintiffs moved the Court to direct a verdict for the plaintiffs, and asked to have several questions submitted to the jury. The Court denied all plaintiffs' motions (fols. 120, 121), and then granted the motion of the defendant for a direction that the jury find a verdict for the defendant. To this direction plaintiffs' counsel excepted (fol. 122), and verdict was rendered accordingly, by the jury, for the defendant.

The following questions, among others, are presented:

I. May the Director of the Mint legally compute the value of foreign silver standard coins otherwise than by estimating the value of the pure metal therein, "expressed in terms of the standard unit of value of the United States, which, under the laws, is declared to be the GOLD DOLLAR, *of the standard weight of* $25\frac{8}{10}$ *grains."*

II. If he cannot, and the only lawful method of computation is as above indicated; may not excessive duties, paid by reason of some other and illegal method of computation, be recovered back when paid under the statutory protests?

Specification of Errors Relied Upon.

1st. The Court erred in refusing to direct the jury to find a verdict for the plaintiffs, the amount of the verdict to be stated by the Court (fols. 33 and 119).

2d. The Court erred in refusing to direct a verdict for the plaintiffs for an amount to be determined by the jury as the Court might advise (fol. 119).

3d. The Court erred in granting the motion of the defendant to direct the jury to find a verdict for the defendant (fols. 34 and 122).

4th. The Court erred in refusing to submit to the jury the question whether the evidence does not show that there was a fraudulent exaction and fraudulent conversion of the invoice value.

5th. The Court erred in refusing to submit to the jury the question whether the evidence did not show there was an irregularity in the estimate of the Director of the Mint, and consequently in the action of the Secretary and defendant's decision based thereon.

6th. The Court erred in refusing to submit to the jury the question whether there was not an irregularity in the assessment and liquidation of the duties.

7th. The Court erred in rejecting the evidence offered by the plaintiffs, to wit, the circular issued by the Treasury Department, bearing date January 1st, 1880, showing the estimates of the values of the Mexican dollar and other various coins on January 1, 1880, by the Director of the Mint, and the proclamation thereupon by the Secretary of the Treasury (fols. 109–111).

8th. The Court erred in rejecting the evidence offered by the plaintiffs, to wit, a letter of Horatio C. Burchard, Director of the Mint, bearing date March 13, 1879, to James D. B. Paine, Esq., which admitted that the value of the Mexican dollar, as proclaimed by the Secretary of the Treasury on January 1, 1879, was arrived at by comparing the amount of pure silver contained in the said Mexican dollar with the amount of pure silver contained in the United States standard silver dollar.

BRIEF.

The following sections of the Revised Statutes govern the practice in the case at bar.

SEC. 2838. "All invoices of merchandise, subject to a duty *ad valorem*, shall be made out in the currency of the place or country from whence the importation shall be made, and shall contain a true statement of the actual cost of such merchandise, *in such foreign currency or currencies*, without any respect to the value of the coins of the United States, or of foreign coins by law, made current within the United States in such foreign place or country."

SECTION 3564. "The value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint and be proclaimed on the first day of January by the Secretary of the Treasury."

The question to be decided in this case is whether the value of a foreign silver coin, to wit, the Mexican dollar, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, is binding upon the Collector and the importer when it is proven that the value of such coin, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, is not the value of the pure metal of that coin of standard value expressed in the money of account of the United States.

This question has never been passed upon by the Supreme Court.

In the case of Collector vs. Richards, 23 Wallace, 246, it was held that this section 3564 governed the customs authorities in their ascertainment of the value of foreign coins in cases where the value of invoices of imported goods stated in such foreign coins are to be computed or ascertained.

There was no pretense and no foundation for any claim in that case that the Director of the Mint in his estimation or the Secretary of the Treasury by his proclamation had valued the coin in question, to wit, the franc of France, otherwise than by stating the value of the pure metal of the franc of standard value in the money of account of the United States, to wit, the gold dollar.

The case of Cramer vs. Arthur, 102 United States Reports, 612, was one involving the application of section 3564 to an invoice in

which the value of the merchandise was stated in Austrian paper florins. The protest in that case was made upon the theory that the value of the Austrian silver florin, the standard coin of Austria, was determined by the Act of Congress of May 22d, 1846, which fixed the value of the florin of the Southern States of Germany at 40 cents. As by this same act the franc of France was fixed at 18 cents and 6 mills, the question raised by the protest was exactly the question decided by this Court in the case of Collector vs. Richards, to wit, whether the Act of May 22d, 1846, or section 3564 of the Revised Statutes, governed the customs authorities in liquidating the invoice in question. On the trial, however, another question was raised and passed upon by the introduction of proof, showing the following state of facts:

The silver florin was at one time prior to 1874 the standard coin of Austria. In 1874 the 8 florin Austrian Hungarian gold piece became or was recognized as such standard coin. Now, the Court say (p. 616): "That the florin is the standard money of account of Austria is as evident as that the pound sterling is the standard money of account of Great Britain. The plaintiff's own invoice is a proof of this; whether represented by a corresponding coin of equal amount is of no consequence. It was only since the beginning of the present century that the pound sterling was thus represented, and yet its value was as fixed and certain before the sovereign was coined as since. Coin is the basis of the currency of both countries. The plaintiff concedes that the 8 florin gold piece is a standard coin of Austria, and he does not pretend that according to this standard the florin would be less than it was valued at in the proclamation of the Secretary of the Treasury. The silver florin was also formerly a standard coin of Austria and the florin as a money of account originally derived its value therefrom. It was from this coin that the valuation of the florin was made by the Director of the Mint as set forth in the proclamation of the Secretary."

It therefore appears that if in that case the plaintiff's contention to the effect that the eight florin gold piece was the standard had prevailed, and plaintiff's invoice liquidated upon that theory, the result would not have been any more favorable to the plaintiff than it was by the rule that the Customs authorities actually adopted. Taking the silver florin as the standard coin in Austria at the time (which plaintiff had proved that it was not) (see bottom p. 613), the contention was that "by the official paper or gazette of the Stock Exchange of Vienna, the silver florin was worth 45 $\frac{46}{100}$ cents in

American gold coin in September, 1874, and the paper florin 43 $\frac{71}{100}$ cents." Plaintiff was put on the stand and he swore to these facts himself. The contention was, therefore, that *as a matter of fact* (not as here by refusing to apply the rule laid down by Congress in section 3564) the Director of the Mint had arrived at a wrong result in estimating the silver florin of Austria at 47 $\frac{6}{10}$ cents gold coin of the United States.

There is not a particle of evidence in the case nor a syllable in the opinion of Justice BRADLEY in announcing the decision of the Supreme Court, indicating any contention or claim by the plaintiff that the Director of the Mint had not strictly and accurately applied the rule laid down in section 3564 in making his estimate, to wit, that the value of foreign coin, in that case the silver florin, as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value. Justice BRADLEY does say that " the valuation made by the Director of the Mint was binding on the Collector and on importers ; just as binding as if it had been in a permanent statute like the Statute of 1846. Parties cannot be permitted to go behind the proclamation any more than they would have been permitted to go behind the statute for the purpose of proving by parol or by financial quotations in gazettes that its valuations are *inaccurate*. The Government gets at the truth as near as it can and proclaims it ; importers and collectors may abide by the rule as proclaimed." (See Point VIII. in brief).

In other words, the Cramer case is one where there was claimed to be only *inaccuracy* in computation. The case at bar is a case where the Director of the Mint has confessedly disregarded the law under which he was acting. He disobeyed the very rule laid down in the statute (section 3564), for determining the value of foreign coins ; and the duty paid upon the excess of value of said merchandise produced by the Director of the Mint and the Secretary of the Treasury not applying the rule laid down in section 3564 " was an amount of duties which *was not* or was not wholly *authorized by law*," and the same having been protested against in order to obtain possession of the merchandise, the importer " may maintain an action" " for the recovery of the said amount," under sections 3011 and 2931 of United States Revised Statutes.

The question stated in its baldest form in the case at bar is : Are the valuations of foreign coins, as estimated annually by the

Director of the Mint and proclaimed by the Secretary of the Treasury, binding on the Collector and on importers in a case where it is proved that the Director of the Mint has not observed the rule laid down in the first part of section 3564, to wit, that the value of such coins, "as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value."

POINTS.

I.

The gold dollar of $25\frac{8}{10}$ grains total weight, containing $\frac{1}{10}$ alloy, is the only standard of the "money of account of the United States." This is expressly declared by statute. Section 3511 Revised Statutes says: "The gold coins of the United States shall be a one dollar piece which, at the standard weight of $25\frac{8}{10}$ grains, shall be the unit of value." The Supreme Court has already recognized this.

In Collector vs. Richards, 23 Wallace, 259, they say; "The basis of our dollar of account (when not effected by the exceptional condition of legal tender notes) is a standard gold dollar of $25\frac{8}{10}$ grains, containing $\frac{1}{10}$ alloy." * * * This is also distinctly recognized by the Customs regulations of the Treasury Department. Article 993 Customs Regulations provides: "The invoice values of foreign merchandise imported into the United States shall hereafter be reduced to the money of account of the United States; that is to say, *the standard gold dollar of* $25\frac{8}{10}$ *grains troy total weight, &c*" (fol. 116).

II.

The first part of section 3564 Revised Statutes, therefore, means that the value of foreign coin shall be that of the pure metal of such coin of standard value expressed in the standard gold dollar of the United States of $25\frac{8}{10}$ grains Troy total weight, $\frac{1}{10}$ alloy.

This Court say, in Collector vs. Richards, 23 Wallace, 259: "The true method of comparing money of account of other countries with ours, where both are based on actual coin, is to compare *the standard coins* of the two countries in their perfect state and to ascertain the actual amount of pure metal in each."

The Hon. John Sherman, Secretary of the Treasury, in his letter of December 30th, 1879, to the Director of the Mint, Exhibit G in printed case (found at folios 88 to 90), gives this interpretation to the law in the most explicit terms. He says as follows:

"Hon. H. C. Burchard, Director of the Mint:

"Sir: I am in receipt of your letter of this date, asking my opinion as to the basis on which estimates of the values of foreign silver coin shall be made under provisions of section 3564 Revised Statutes. In reply I have to inform you that, in my opinion, the law clearly contemplates that the estimates should be based on the *commercial value of the pure silver contained in the coin of full weight expressed in terms of the standard unit of value of the United States*, which under the law is declared to be the gold dollar of the standard weight of $25\frac{8}{10}$ grains."

III.

In the case at bar the Director of the Mint, in estimating the value of the Mexican dollar proclaimed by the Secretary of the Treasury on the first day of January, 1879, has not estimated the value of the *pure metal* of such coin as expressed in the *standard gold dollar* of the United States, but, on the contrary, he has estimated the value of the pure metal of such coin as expressed in the United States standard *silver* dollar. This was conceded by the Government (which subsequently admitted its error by changing its calculations to accord with the law as expressed above by Secretary Sherman). Moreover, the fact conclusively appears in this record by the testimony of Frederick Eckfeldt, who testifies that "he was in the office of the Director of the Mint in 1878–1879 as computor of bullion, and was instructed by the Director of the Mint in the latter part of 1878 to calculate the value of foreign

silver coins in the United States money of account, and he performed the calculations referred to on the basis of the standard silver dollar. The calculations were made by comparing the pure metal in each foreign silver coin with the amount of pure metal in the United States standard silver dollar."

See fols. 52 and 53.

Mr. Burchard also testifies that Mr. Eckfeldt's testimony is correct (fol. 62).

In answer to the 7th interrogatory (folio 53) Mr. Eckfeldt also says of the Treasurer's proclamation: "The value of the quantity of pure silver was not stated in the standard United States gold dollar, but in the United States standard silver dollar of $412\frac{1}{2}$ grains weight, $\frac{9}{10}$ fineness; containing $371\frac{1}{4}$ grains of fine silver. By this estimate the Mexican silver dollar was computed to be worth $101\frac{5}{10}$ cents. The value of the Mexican dollar at the time of such proclamation, as expressed in the standard gold dollar of the United States, was $85\frac{3}{10}$ cents."

See answer to 11th interrogatory by Eckfeldt, folio 57.

IV.

There was therefore an overvaluation of $16\frac{2}{10}$ cents in every dollar of the appraised value of plaintiff's invoice due entirely to the disregard by the Director of the Mint of the rule laid down in section 3564, Rev. Stat.; and the duties that plaintiff was obliged to pay upon that $16\frac{2}{10}$ cents in each dollar was "an amount of duties not authorized by law," paid under protest to obtain possession of the merchamdise and therefore distinctly within the provisions of sections 2931 and 3011 United States Rev. Stat. authorizing action to ascertain "the validity of such demand and payment of duties and to recover back any excess so paid."

The case of Cramer vs. Arthur, 102 U. S. R., 612, exhibited no such question. There was not in that case a scintilla of proof tending to show that there had been payment of "duties not authorized by law." The protest in that case claimed an illegal exaction of duties on the ground that the Act of 1846 should have governed in

estimating the value of the florin. When the decision by this Court in the Richards case made that view hopeless, the attempt was made to sustain the action on a ground not specifically stated in the protest, to wit, 1st. That the Director of the Mint had not estimated on the proper standard coin of Austria; and as (in case it was admitted that the gold florin was the standard), this plaintiff was not damaged: 2d. That the Director of the Mint had made a mistake as shown by the commercial bulletin of Austria in figuring the value of the silver florin (if it was a standard coin), in the standard gold dollar of the United States. In other words, he had made a mistake in his figures, or had not selected the most desirable foreign standard coin as the basis of conversion; not that he had disregarded or violated the plain rule laid down by the statute and adopted an arbitrary regulation of his own contrivance in making his estimate.

N. B.—The power to decide what *particular coin is the standard of any foreign nation* may have been committed to the Secretary of the Treasury by Section 3564 of the Revised Statutes, *i. e.*, the fact that the Director of the Mint is to "estimate" and the Secretary of the Treasury is "to proclaim annually" "*values of the standard coins*" of foreign nations, no rule being laid down to guide or limit them as to the selection of the *standard* implies that the power to select such standard was delegated to them; but in the matter of *ascertainiug values* Congress has expressly laid down the rule and the power to estimate values is not an absolute unlimited power. This power is limited by the rule laid down by Congress.

This Court recognizes this power and limitation in the Cramer case. For in that case the contention was that the Secretary had selected the wrong standard, and the Court hold that the Secretary's action on that question is final.

V.

ALL VIOLATIONS OF LAW resulting in an exaction of illegal or excess of duties are cognizable and will be corrected by suits against the Collector under the provisions of sections 2931 and 3011, United States Rev. Stat., and it makes no difference whether such violation is the act of the Collector himself, or of some other officer

of the Treasury Department of the Government. The sole question is whether the illegal act has resulted in an excess of tax upon the importer which he has paid under protest.

The express language of section 3011 requires two things and two things only to authorize a suit.

(*a*) That the suitor shall have paid under protest to the Collector money as duties, and

(*b*) That "the amount so paid was not, or was not wholly, authorized by law."

These two things concurring, the section authorizes suit by the person so paying and recovery "*of the excess.*"

All questions of legality, when duties are paid under sufficient protest, are also expressly reserved for a suit at law under section 2931.

Therefore to defeat the plaintiff's right of action and recovery in this case the Court must hold that this duty was "wholly authorized by law." For it is admitted that the plaintiffs have complied with the first essential under this section of the statute, to wit, they have paid this money as duties to the Collector under protest; have made due appeal to the Secretary of the Treasury, and have seasonably entered their suit.

2. The legality of the action of the following-named Customs Officers resulting in excess of duties has been tested by suit against the Collector for recovery of such excess in the following instances, *i. e.:*

(*a*) As to whether an appraiser was lawfully sworn.
Vaccari vs. Maxwell, 3 Blatch., 368.
Iasigi vs. Collector, 1 Wall., 375.

(*b*) As to whether the appraisers had fully and fairly examined the goods.
Greely vs. Burgess, 18 How., 413.

(*c*) Whether the appraisers had erred in taking time of manufacture, instead of time of export in estimating value of goods.
Thompson vs. Maxwell, 2 Blatch., 384.
Greely vs. Thompson, 10 Howard, 225.

(*d*) When appraisers in estimating values have taken the in-

voice as showing the amount when actual count or weight showed a less amount.

Marriott vs. Brune, 9 How., 619
U. S. vs. Southmayd, 9 How., 646.
Lawrence vs. Caswell, 13 How., 488.
U. S. vs. Nash, 4 Cliff., 107.
Schuchardt vs. Lawrence, 3 Blatch., 397.

In the foregoing instances recovery has been sustained of excess of duties arising from illegal acts of appraisers in estimating values of goods imported, although the law has declared "that the appraisement *thus* determined shall be final," &c. The principal is that an illegal appraisement is not final when sufficiently protested against. See also sections 14 and 21 of Ch. 391 Act of June 23, 1874, reserving finality in all cases of protest.

VI.

The action of the Director of the Mint in not estimating this foreign coin, according to the rule laid down by Congress, to wit, by calculating "the value of the pure metal of such coin expressed in the money of account of the United States," is an act not within the power conferred upon him by law, and is therefore void.

1. The Constitution commits to Congress the power "to coin money, *regulate* the value thereof and of *foreign coin*."

2. In section 3564 Congress has provided a general *rule or regulation* for the valuing of foreign coins *applicable to all cases*, to wit, that their "value shall be that of the pure metal of such coin expressed in money of account of the United States."

3. The Director of the Mint was only empowered to estimate the value of foreign coins, according to this *rule* or *regulation* prescribed by Congress.

To hold otherwise would be declaring that he was not bound by a law of Congress, but could act arbitrarily notwithstanding Congress had passed a general law governing this and all other cases where foreign coin values are in question.

This cannot be done.

De Forest vs. Redfield, 4 Blatch., 478.

4. Officers must act within the power conferred on them by law or their acts are void.

This rule is universal.

(*a*) It applies to *courts*, both of general and limited jurisdiction.

Thompson vs. Whitman, 18 Wall., 457.
Windsor vs. McVeigh, 93 U. S., 274.
Pennoyer vs. Neff, 95 U. S., 714.
Risley vs. Phœnix Bk., 111 U. S., 125.

(*b*) It applies to tax officers (assessors) in doing acts which determine the tax.

Mygatt vs. Washburn, 15 N. Y., 316.
Whitney vs. Thomas, 23 N. Y., 281.
Nat. B'k of Chemung vs. City of Elmira, 53 N. Y., 49.
Van Allen vs. Assessors, 3 Wall., 573.

(*c*) It applies to Internal Revenue officers.

Bailey vs. Railroad Co., 106 U. S., 109.
Reynolds vs. Williams, 4 Bissell, 108.

(*d*) It applies to Customs officers.

Greely vs. Thompson, 10 How., 225.
Greely vs. Burgess, 18 How., 413.

In the opinion in this Court in the case of Hilton vs. Merritt, 110 U. S., 106, Justice WOODS says with reference to the finality of the valuation found by appraisers:

"We are of opinion that the valuation made by the Customs officers was not open to question in an action as long as the officers acted without fraud and *within the power conferred on them by the statute.*"

(*e*) It applies to the President of the United States.

DeForest vs. Redfield, 4 Blatch., 478.

(*f*) It applies to Cabinet officers, the Secretary of the Treasury and his subordinates.

Morrill vs. Jones, 106 U. S. R., 466.

In this case the question arose as to the construction to be given to section 2505 of the Revised Statutes, which provides that "Animals alive, specially imported for breeding purposes from beyond seas, shall be admitted free of duty upon proof thereof satisfactory to the Secretary of the Treasury

and under such regulations as he may prescribe." The Secretary of the Treasury prescribed, among other things, that before a collector should admit such animals free he must "be satisfied that the animals are of superior stock, adapted to improving the breed in the United States." Chief Justice WAITE, in delivering the opinion of this Court, said: "The Secretary of the Treasury cannot, by his regulations, alter or amend a revenue law; all he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."

"In the present case we are entirely satisfied the regulation acted upon by the Collector was *in excess of the power of the Secretary.*"

"The statute clearly includes animals of all classes; the regulation seeks to confine its operation to animals "of superior stock. This is manifestly an attempt to put into the body of the statute a limitation which Congress did not think it necessary to prescribe." * * * "In our opinion, the object of the Secretary could only be accomplished by an amendment of the law. That is not the office of a Treasury regulation."

VII.

The act of the Director of the Mint being void, all subsequent acts and proceedings based upon the act are affected by the vice.

There must be a valid estimation by the Director of the Mint before the Secretary of the Treasury lawfully can proclaim such estimated coin values and unless the Director of the Mint *lawfully estimates* and the Secretary proclaims according to such lawful estimate the dutiable amount as determined and acted on by the Collector and the duty collected by him are *illegal*,—without warrant of law.

VIII.

The value of this foreign coin as proclaimed by the Secretary of the Treasury, being based upon an illegal estimate by the Director

of the Mint, that illegality is just as fatal in its results in invalidating the valuation of goods determined by it as a disregard of a value stated in a statute would be in accomplishing the same result. Both are the results of violating the law for determining such values.

In Cramer vs. Arthur, 102 U. S., 617, Justice BRADLEY says: "Parties cannot be permitted to go behind the proclamation any more than they would have been permitted to go behind the statute for the purpose of proving by parol or by financial quotations in gazettes that its valuations are inaccurate."

The learned Justice simply means by this that *inaccurate valuations* found in the proclamation of the Secretary cannot be questioned any more than inaccurate valuations found in a statute.

It will not be contended that the Secretary of the Treasury, by virtue of the power conferred upon him by section 3564, has the same right or power to fix an *absolute* or arbitrary *valuation* for coins that Congress possesses as the law-making power of the nation. 1st. Because by said section Congress has not in fact delegated any such absolute power to the Secretary. The power delegated by that section is a very limited power—a power to proclaim the values of standard coins estimated by the Director of the Mint; and the rule governing that estimate is the general rule laid down by Congress governing all coin valuations in which they say "*the value of foreign coin*, as expressed in the money of account of the United States, *shall be* that of the pure metal of such coin of standard value."

2d. Because, necessarily from the nature of their respective offices and functions, Congress could fix an absolute, arbitrary value to coins, if it saw fit. This is an incident of its right to *make laws*; while the Secretary of the Treasury, a creation of the Legislature, can only exercise such powers as Congress gives him. Congress never has given him and, we humbly submit, never can constitutionally give him, the power to *make laws*. The power to declare *arbitrarily* the value of a coin is making—creating—a law, and is solely a legislative function. The power to declare the result of a calculation or estimate made by the Director of the Mint upon the basis of a rule laid down by Congress is solely an executive function.

Again, admitting what we suppose to be the point claimed by the learned Justice—to wit, that an act which points out the method of arriving at the values of coins finally fixes those values just as irrevocably as if the act had in the beginning declared those values in figures,—it still holds true that if the method pointed out is not fol-

lowed in arriving at the values to be fixed, and a wrong value is the result, the law is violated as radically and effectually as if you had disregarded the valuation named in figures in the act.

We therefore accept the test prescribed in the opinion of this Court in Cramer vs. Arthur, and admit that the proclamation of the Secretary of the Treasury as to the value of coins, *when made pursuant to section 3564*, is just as final as, and no more so than, a value named in the statute.

IX.

The Act of Congress of February 28, 1878, "To authorize the coinage of the standard silver dollar and to restore its legal tender character" (20 Stat. at Large, 25) did not make that coin the "unit of value" of "the money of account of the United States."

1. The Act of 1878 says nothing in reference to the "unit of value." The subject is not mentioned in the statute. It only says "silver dollars" of weight and fineness prescribed by law "shall be coined," which coins, together with all silver dollars heretofore coined by the United States of like weight and fineness shall be a legal tender at their nominal value, for all debts and dues, private and public, except when otherwise expressly stipulated in the contract."

2. The Act of February 12, 1873, Sect. 14, (§ 3511 Rev. Statutes,) was not repealed by the Act of February 28, 1878, and that former act expressly declares that the gold dollar is the "unit of value," and such it continues until that provision of the law is repealed or modified by subsequent legislation.

Dr. Linderman, in his book entitled, "Money and Legal Tender," at page 4, gives the following definition:

"Money of account.—The ideal unit or money term in which accounts are stated or transactions made—as the pound sterling of Great Britain, the dollar of the United States, the franc of France, and the reichmark of the German Empire."

He then adds:

"In modern times a government first establishes a money of account or *ideal unit*, and then fixes by law the quantity of gold

or silver which shall *in the form of a coin* WITH UNLIMITED LEGAL TENDER POWER represent that ideal unit."

The Act of 1873 made and declared the gold dollar to be "*the unit* of value" of our money.

The Act of 1878 said a certain amount of silver *when bought by the Government and coined with certain devices* should be a *legal tender* at its nominal value, to wit: the dollar—the unit of our money of account. But such dollar is not made the unit of value. That quality remained alone with the gold dollar.

THE POWER OF LEGAL TENDER IN MONEY IS NOT SUFFICIENT OF ITSELF TO MAKE SUCH MONEY THE UNIT OR MEASURE OR RULE BY WHICH THE VALUE OF OTHER (FOREIGN) MONEY SHALL BE MEASURED.

The subsidiary coins have the legal tender quality to a certain extent, just as the silver dollar has to a certain other extent. But no one would think of arguing that because they were made legal tender by law, therefore they were or could be used as the unit of value of our money of account in estimating the value of other (foreign) coin.

So much gold stamped is made the "unit of value" of our money. So much silver stamped is made a "legal tender" in the United States, "except as provided by contract," or "in sums of five dollars or less." That is to say, by law and without reference to value, such silver so bought and stamped by government discharges debts expressed in money units in the United States just as the greenback when a legal tender had previously been capable of discharging them, without reference to its intrinsic value. But neither the silver so coined or the paper so stamped, although a perfect legal tender, could be used as the unit of value—the absolute standard or measure of value in our money.

(*a*) Because by statute law the gold dollar—the coin of greatest intrinsic value and stability in our currency, and hence possessing the inherent qualities of a standard—was declared *the unit of value*, and no other coin or dollar was so declared.*

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*It is noteworthy that all the financial accounts and transactions of the government in its dealings with foreign money—payments and remittances—are based on the gold dollar as the unit of value.

(*b*) Because the very phraseology of § 3564, Rev. Stat., in speaking of "*the* value" presupposes that there is "a unit of value" a single absolute standard by which "*the* value" can be determined. If there were two differing standards or units of value there could be no such thing as "*the* value;" there would necessarily be *two values* as well as two standards.

X.

The plaintiffs in error in this case are entitled to recover the money they paid as duties in excess of the amount they would have paid on their goods if valued on the basis of the standard gold dollar of the United States, and judgment obtained should be reversed and ordered accordingly.

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Mason W. Tyler,
Of Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1884.

HADDEN ET AL.
vs.
MERRITT, COLLECTOR. } No. 269.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

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BRIEF FOR THE UNITED STATES.

The case is fairly stated in the brief of the learned counsel for the plaintiffs in error.

The questions presented by the assignments of error are as follows:

1. Under section 3564, Revised Statutes, can the Director of the Mint *estimate* the value of standard foreign *silver* coins in United States *silver* dollars; or must that estimate be in United States *gold* dollars only?

2. If the gold dollar be the only measure of value in such case, is a collector of customs revenue at liberty to disregard the proceeding by which the Director of the Mint has reached any estimate that has been *proclaimed* by the Secretary of the Treasury; in other words, can he in the course of executing his office *go behind* such proclamation?

3. If in any case he can disregard such proceeding, is a protest by an importer sufficient notice to require him so to do?

1. The director of the mint may [*should?*] estimate the value of standard foreign *silver* coins in United States *silver* dollars.

Section 3564, Revised Statutes (brief for Hadden, p. 5) directs this *estimate* to be made for the purpose as well of receiving *such coins* from debtors of the United States, as for instructing collectors in the discharge of their duties under section 2838 (for which see brief, &c., p. 5).

In the former case, section 3566, Revised Statutes, provides as follows: "All foreign gold and silver coins received in payment for moneys due to the United States shall, before being issued in circulation, be coined anew." In other words, they are treated as bullion. Therefore, when received from public debtors, foreign silver coins are valued as bullion, applicable to coinage of domestic *silver* coins, *i. e.*, are valued *in* such domestic *silver* coins.

If section 3564 have that meaning as regards dealings in which public debtors transfer the foreign silver coins themselves to the United States, why should it not have the same meaning in dealings where the debtor is called upon to pay to the United States a percentage of values rated in foreign silver coins? In one case the dealing is in foreign silver coins; in the other, it is in foreign silver coins' *worth*. In the former case the whole amount of coins is transferred; in the latter, only a percentage of the *worth*.

I submit that nothing in the phrase, "*expressed in the*

money of account of the United States," in section 3564, contradicts this conclusion. "Money of account of the United States *expressed*" means there no more than *dollars, dimes, cents,* and *mills,* as seems apparent by the preceding section (3563), which is: "The money of account of the United States shall be expressed in *dollars* or units, *dimes* or tenths, *cents* or hundredths, and *mills* or thousandths; a *dime* being the tenth part of a dollar, a *cent* the hundredth part of a dollar, a *mill* the thousandth part of a dollar, and all *accounts* in the public offices, and all proceedings in the courts shall be kept and had in conformity to this regulation."

"Dollar" (generally, absolutely, and simply, without qualification or condition annexed) means in law, indifferently, a dollar either of silver or gold.

When section 3511 provides that "The gold coins of the United States shall be, a one-dollar piece, which, at the standard weight of 25.8 grains, shall be the unit of value; a quarter eagle, or two-and-a-half dollar piece; a three-dollar piece," &c., it means no more than that the *gold* dollar is *the unit, &c., of gold coins!* The subject-matter of the whole section is "gold coins," and of these the dollar, of such and such a weight, is the unit, the others being, in value, two and a half, or three, or five, or ten, or twenty times that unit. This expression could not be used in connection with *silver* dollars in the act of 1878, ch. 20 (20 Stat., 25), because there are no silver pieces greater than a dollar; and *fractional* silver pieces do not conform to its bullion value. That which is the *unit* of our "money of account" is stated in section 3563, quoted above, *i. e.*, the "dollar," whether of silver or gold, or even of greenbacks.

In point of law there is in general no difference in value betwixt silver dollars and gold dollars, whatever *the market* may say to the contrary. A court cannot go into discussions of the comparative value from time to time of these metals in order to interpret a statute which speaks of "money of account." To do so would be to take for granted a fluctuating meaning therein by the legislature. The propriety of maintaining two sorts of dollars, and those *imagined* by merchants and bankers to be of different powers, is a political one. It seems to accord with the same policy to measure foreign gold coins by our gold coins, and foreign silver coins by our silver coins; at least for the purposes of section 3564, the law seeming to regard the former as one source of gold bullion, and the latter as one of silver bullion for our coinage needs.

2. A collector of customs is not at liberty to go behind the proclamation of the Secretary of the Treasury and criticise the methods by which the Director of the Mint made his estimate.

Such, I submit, is the rule in the cases in 23d Wallace, at page 246, and 102 U. S., at page 612, cited by the learned counsel for Hadden, p. 5, &c.

It is said that that rule is only to the effect that a collector cannot do this as regards *clerical* mistakes or other matters of mere *detail;* but that where, as here, the *error* [*admitted* for the purpose of this branch of the argument] consists in *disobeying the rule itself for ascertaining the value*, the case belongs to that class in which an administrative officer of specified powers transgresses the limits

of his *commission; i. e.*, the official act so done by him ["estimate"] is void.

On the contrary, it seems that such construction would in practice lead to consequences of *confusion* and *obstruction* that amount to *reductio ad absurdum* (or, "*happy despatch*"). Could the collector enforce the duties *by any other calculation of value than the estimate?* Is not the observance of the rule laid down a matter entirely betwixt the Secretary and Director (under general correction by the President) on one side, and the legislature on the other, so that the principle applies "To his own master he stands or falls?" Is it not the intention of the law that in the absence of directions previously obtained from a court of justice, such administrative rulings by superiors shall govern the official action of subordinates, the latter being regarded as in the way of *duty* whilst in that of *obedience*, and the legislature in the mean time having ultimate control over any decision, by ordering improper exactions to be refunded?

3. At all events, as I submit, a mere protest is not enough to put a collector in the wrong for complying with an estimate so proclaimed. If such estimate be not an end of controversy for the collector, it at least constitutes such a *probability* that he is not put in the wrong by *refusing disobedience*. The case is not like one in which errors are suggested as having been committed in his own office or vicinity, by appraisers or others, whose action he can control or correct upon the spot, *pendente lite*.

S. F. PHILLIPS,
Solicitor-General.